3451.

SUPREME COURT OF THE UNITED STATES.

No. 107.

DANIEL R. SOUTHARD & AL., APPELLANTS,

VS.

GILBERT C. RUSSELL.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF KENTUCKY.

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3453.

Pleas before the Honorable John Catron and Thomas B. Monroe, Judges of the 8th Circuit Court of the United States of America, in and for the Kentucky District, at the Capitol in Frankfort, at the May Term of the said Court, in the year one thousand eight hundred and fifty-three.

DANIEL R. SOUTHARD and others, Complainants, *vs.* GILBERT C. RUSSELL, Defendant.	In Equity—on Bill of Review.

Preamble.

Be it remembered that heretofore, to wit, at a Circuit Court held for the Circuit aforesaid, at the May Term thereof, in the year 1852, and on the 14th day of June in said year, came Daniel R. Southard, Samuel D. Tompkins, William L. Thompson, Matilda Burks, Joseph R. Tunstall, John Burks, James Burks, Samuel Burks, Charles Burks, and Mary Burks (the four last named by William L. Thompson, their next friend), by S. S. Nicholas and C. M. Thruston, Esqrs., their counsel, and Gilbert C. Russell by C. S. Morehead, and B. Monroe, Esqrs., his counsel.

Motion to file Bill.

And the said Southard and others, by their counsel, moved the Court for leave to file a Bill of Review of the decree rendered herein at the present term in favor of the said Russell against the said Southard and others; and presenting their bill, read in support of their motion the following documents, viz.:—

The affidavits of James Guthrie, Willett Clarke, Daniel S. Rapelge, U. E. Ewing, Thomas G. Addison, George Hancock, Charles M. Thruston, John P. Oldham, J. C. Johnston, D. F. Clark, and of R. F. Baird, and a paper purporting to be an extract from a letter from Russell to J. W. Wing, and a copy of the deed from G. C. Russell to Joseph B. Stewart. And the said Russell, by his counsel, opposed the motion, and objected that the grounds made out were insufficient, and read in his behalf the documents which follow:—The affidavits of Elias R. Deering, Elijah C. Clark, Robert F. Baird, J. B. Stewart, Philip Richardson, and of Robert F. Baird, a copy of the record of Burks against Southard, and a copy of the opinion of the Supreme Court of the United States upon a motion for a new hearing, with the affidavits attached thereto.

Whereupon the argument of counsel was heard in part, but there not being sufficient time to go through with the same, the cause is continued until to-morrow.

And on the next day of said term, to wit, Tuesday, June 15th, 1852,

Oral leave to file Bill.

Came again the complainants by S. S. Nicholas, Esq., their counsel, and the defendant, Gilbert C. Russell, by C. S. Morehead and Benj. Monroe, Esqrs., his counsel. And the argument of counsel was fully heard, and the Court being sufficiently advised—

It is considered that the complainants have leave to file their Bill of Review tendered, on their entering into bond with sufficient surety in the usual form, for the payment of all costs to which they shall become liable, or which shall be adjudged against them, or either of them. The defendant, Russell, moved the Court to strike from the bill all that portion relating to champerty and all that portion relating to the explanation of the evidence of J. C. Johnston, by the introduction of his affidavits, and all other parts of said bill which is designed to explain the evidence already in the original record. The Court overruled the motion, but reserved all the questions of the competency and effect of the matters the defendant moved to have stricken from the bill, to be decided when they may be made in the progress of the cause, or on the final hearing thereof.

Agreement to take Depositions.

The parties, by their counsel, agree that the defendant, Russell, may take the deposition of Philip Richardson before he files his answer, and the complainant on the bill of review may take the depositions of George Hancock and Dr. J. C. Johnston, subject to all legal exceptions, except as to the time of taking, upon notice given to parties or their counsel, Joseph B. Stewart and Charles M. Thruston.

The following are the affidavits and documents read by complainant Southard, &c., on the application to file the Bill of Review.

James Guthrie's Affidavit.

Affidavit of James Guthrie.

James Guthrie says that he and his partner, Robert Tyler, now dead, were the attorneys of all the defendants, except Southard, in the suit of Russell *vs.* Southard, &c., that his clients, knowing nothing of the original matters of controversy between Russell and Southard, and having only a minor and subsidiary interest in the cause, its preparation and defence as to the principal matters of controversy were trusted exclusively to Southard and his attorney,—that affiant knew nothing of the new matter set up in Southard's Bill of Review prior to the rendition of the said original decree, and supposes his partner and their said clients were equally ignorant, as otherwise he presumes he would have heard from them something on the subject. S. D. Tompkins was suddenly called from home to Virginia, and will probably not be back during the present term of the Court.

JAMES GUTHRIE.

May 18*th*, 1852.

Personally appeared James Guthrie before me and made oath that the foregoing affidavit is true, to the best of his knowledge and belief.

WILLIAM MINOR,
Notary Public.

Willett J. Clarke's Affidavit.

Willett J. Clarke's Affidavit.

I, Willett J. Clarke, state that in the latter part of March or beginning of April last, Peter Wood offered to sell me a note on Joseph B. Stewart for $280, and some three years' interest thereon. I asked him who Stewart was, he answered he was the lawyer of Col. Russell, who had recovered the farm from Southard; said he had been offered $150 for the note by Mr. Monserrat, which he would not take, but that he would take the amount of the principal without interest, that Stewart had promised to pay him from time to time, and the last time he called on him he insulted him, Wood. He came to my house on 7th inst., and said he expected Stewart here in a few days, and if he did not pay the note he would wait no longer. That he must have money, and feared he would have to sell to me. In the first conversation with Wood, he said that Russell owed him for money lent whilst they were in the army together; in a subsequent conversation, he said he owed $125 or $126 for a doctor's bill, and another amount for meat and meal furnished. That being called upon by Stewart to give his deposition for Russell, in his case against Southard, he had refused to give it unless his debt on Russell was paid or secured, and Stewart had given him the note in consequence of his giving his deposition.

I had several conversations with Wood on the subject, and in one of them he intimated that he expected to receive 10 or 15 acres of the land Russell had recovered from Southard, or at least used language that made me think he probably so expected.

W. J. CLARKE.

STATE OF KENTUCKY,
Jefferson County, sct.

This day W. J. Clarke was duly subscribed and sworn before me to the above affidavit, this, May 17, 1852.

GEORGE MORRIS.
J. P. J. C.

Daniel S. Rapalge's Affidavit.

Affidavit of Daniel S. Rapalge.

Daniel S. Rapalge states that some time about the last of March or first of April, he was present at a conversation between Dr. Peter Wood and a man by the name of Deering, concerning a note which Wood said he held on a man named Stewart, and which, as he said, had been executed to him by Stewart for giving his deposition in a suit against Daniel R. Southard.

D. S. RAPALGE.

Subscribed and sworn to before me, this 15th day of May, 1852.

JOS. CLEMENTS,
J. P. J. C.

U. E. Ewing's Affidavit.

Affidavit of U. E. Ewing.

Doctor U. E. Ewing states that some short time before the late James Southard bought from Russell the farm near Louisville, on the Bardstown road, the farm was advertised, and offered for sale at public auction. He understood, but from whom he cannot now recollect, that it could be bought for about four thousand dollars. He attended the sale with a view of buying it for a residence, but upon further inquiry, he found its reputation for extreme unhealthiness was such that he declined attempting to make the purchase, and made no bid. It was cried, but no bid being made it was not sold.

U. E. EWING.

STATE OF KENTUCKY,
Jefferson County, sct.

Sworn to by U. E. Ewing before me, this 14th May, 1852.

JOHN W. TYLER.
Notary Public.

Thomas G. Addison's Affidavit.

Affidavit of Thomas G. Addison.

JEFFERSON COUNTY,
City of Louisville.

This day Thomas G. Addison came before me, the undersigned, a justice of the peace for the county aforesaid, in the State of Kentucky, and made oath that he is, and has been for some time past, acquainted with Dr. Peter Wood, now, and he believes, of the City of Louisville, being the same man whose deposition was taken by Gilbert C. Russell, in his suit lately pending in the Circuit Court of the United States for the State of Kentucky, and being the same cause which, he has been informed, was decided at the present term of the Supreme Court of the United States. He is well acquainted with Joseph B. Stewart, attorney at law, and with his handwriting; said Stewart having been one of the attorneys employed in said suit, by Russell against Southard; and the said Stewart, to his certain knowledge, superintended most, if not all, of the depositions for and in behalf of said Russell. He also states that for several years past he has acted as agent for others, in renting out houses and procuring houses for others, and in collecting debts, &c., &c.

That, at the beginning of last November, the said Peter Wood came to the office (part of which he occupied) and inquired for said Stewart, and seemed very anxious to see him; he told affiant he had Stewart's note for (he verily believes) three hundred dollars, and wished to get the money, and thinking that affiant could more readily find Stewart, that he would hand affiant said Stewart's note for (he is quite sure of speaking from memory) three hundred dollars, dated some two years ago, and requested this affiant to collect the same, and that he would pay him the sum of twenty-five dollars for so doing. Knowing that Mr. Stewart was then under embarrassment, he said nothing about it to him, having only seen him once or twice ad interim, and then he handed the note back to Dr. Peter Wood, not being disposed to harass and trouble said Stewart about the matter. He is certain that the said note was written and signed by said Stewart; he is familiar with his handwriting, having often seen him write, and having had various writings from time to time in his possession.

THOMAS G. ADDISON.

Subscribed and sworn to before me, this 14th day of May, 1852.

JOS. CLEMENT.
J. P. J. C.

George Hancock's Affidavit.

Affidavit of George Hancock.

George Hancock states, that some short time before Russell sold his farm near Louisville to Southard, he offered to sell it to affiant for $5000, and was very importunate with him to buy it at that price. He also made the same offer to affiant's sister, the late Mrs. Caroline Preston. Affiant thought the place a bargain at that price, and would have bought it, but was deterred from doing so on inquiry, from the extreme bad repute in which the place was held for unhealthiness. Col. Taylor, the father of the late Gen. Zachary Taylor, told affiant that he had resided there, or near it, at one time, and from the unhealthiness of the place he had been induced to suspect that the spring was affected by some deleterious mineral.

Colonel Russell told me whilst conversing about the place, in explanation of the very high price he said he had given Floyd for the place, that he, Russell, had a heavy claim against the United States pending before Congress, and before it was allowed, Floyd offered to sell the farm to him at that price; he told Floyd that he was not able then to buy it, but if his claim were allowed he would give him his price for the farm, and the claim having afterwards been allowed, he thought himself bound to comply with his promise, and made the purchase.

GEORGE HANCOCK.

STATE OF KENTUCKY,
Jefferson County, sct.

Subscribed and sworn to before me, May 15th, 1852.

JAMES J. DOZIER,
Notary Public for Jefferson County aforesaid.

George Hancock states further, that he does not recollect certainly when he had the first conversation with Daniel R. Southard, or his counsel, about the matter stated in the foregoing affidavit, but it was within the last six or eight months.

GEORGE HANCOCK.

Personally appeared George Hancock before me, this 20th day of May, 1852, and made oath to the truth of the foregoing additional affidavit.

JOHN W. TYLER,
Notary Public.

C. M. Thruston's Affidavit.

Affidavit of Charles M. Thruston.

Charles M. Thruston states, that he and the late P. S. Loughborough, were the only attorneys of Daniel R. Southard, to aid him in the preparation and defence of the suit in Chancery, lately pending in the Circuit of the United States, Kentucky District, wherein Gilbert C. Russell was complainant, and said Southard and others were defendants. That the other defendants and their attorneys left the preparation and defence of the main matters in controversy to said Southard and his attorneys. That at the time the original decree was rendered in said cause, this affiant had no knowledge of the facts set forth in the affidavits of Hancock, Ewing and Oldham, filed with Southard's Bill of Review, herein,—or of any of the facts stated in the affidavits filed therein, for the purpose of maintaining the charge of subornation against Stewart and Wood, nor of the extract from Russell's letters, relied upon to show that Russell had no right of reclamation against Floyd, for the difference between the price paid and received by Russell in the sale of the farm. Nor that Doctor Johnston would make the explanations of his deposition set forth in his affidavit.

CHARLES M. THRUSTON.

Sworn to, and subscribed before Caleb W. Logan, Notary Public for Jefferson County, May 17th, 1852.

C. W. LOGAN.
Notary Public.

John P. Oldham's Affidavit.

Affidavit of John P. Oldham.

John P. Oldham states, that he was acquainted with the property at Huntsville, Alabama, owned by Clayton Talbott in 1827, and says it would not then have been worth more than four thousand dollars, as the property was afterwards sold by Talbott for less than that sum, on a credit of from one to five or six years. He says, however, that he believes that Talbott in 1827 estimated his property at something like $10,000.

JOHN P. OLDHAM.

Jefferson County, sct.

This day, John P. Oldham subscribed and swore to the above affidavit, before

February 16th, 1852. W. S. PILCHER.
N. P. J. C.

J. C. Johnston's Affidavit.

Affidavit of James C. Johnston.

I, James C. Johnston, state, that in my deposition taken in the suit in this Court, of Gilbert C. Russell against Daniel R. Southard, &c., it was not my intention to convey the idea, that from my recollection and understanding from Russell and James Southard, he, Russell, was in any way bound to pay back the $5000 paid by Southard, but that it was only a privilege which he retained to himself to pay back that amount in four months, if he thought proper to do so, and get back the farm. It was not my intention to convey the idea that Russell was in any way bound to refund the money, unless he chose to do so. On the contrary, it has always been, and is now my clear understanding of the agreement, from what they told me, that it was Russell's privilege to make Southard retain the farm at the price he had paid, or by paying back in four months to cancel the sale. I read the written agreement when I gave my deposition, and have just now again read it; both then and now I understand such to be its purport, and neither then nor now have found any difference between it and what my recollection tells me was the substance of the conversation between the parties when I attested the agreement. I think that if I had found any difference between the agreement and my recollection, I would certainly have pointed it out in my deposition. My impression is, that finding them to agree I expressly incorporated the written agreement with my deposition, for fear that any misstatement of mine, as to my recollection of what passed, might prejudice either of the parties. Understanding that the Court has put a different interpretation on my deposition, I am bound to presume that the language used by me is not as clear and unambiguous as it ought to have been, and I can but express my deep regret that either party should have been prejudiced by such unintentional ambiguity. I have no recollection that Southard or either of the defendants, or their attorneys, had any conversation with me about my testimony, either before or after my deposition was given, until after I had heard of the decision in the Supreme Court, when S. S. Nicholas applied to me to know what I had meant, and I told him in substance what is herein stated. My recollection is that when Mr. Stewart, the attorney of Russell, applied to me for my deposition I refused to give it until the written agreement was produced, so that I might compare my recollection therewith, and if they agreed, that I might make it the basis of my testimony.

J. C. JOHNSTON.

The above was subscribed by J. C. Johnston, and sworn to before me, this 21st May, 1852.

M. MURPHY.
Notary Public.

D. F. Clarke's Affidavit.

Affidavit of D. F. Clarke.

D. F. Clarke states, that some time during the present spring, Dr.

Peter Wood mentioned to him that he had a note on Joseph B. Stewart for $280, which he wanted to sell: that he wanted the money badly, as he wished to go to Texas and Mexico where his son was. Affiant told him that his brother William wanted to buy some notes, and that if he, Wood, would bring the note and let him, affiant, see it, it was probable his, affiant's, brother would buy it. He said he would do so. A day or so after Wood called upon him and told him his son had the note, and had forgot to show it to him. Affiant said to the Doctor, that his son did business next door to his house of business, and he would go there and see it. He did go and the young Wood showed him the note. It was for $280, dated the 18th day of April, 1849, and was signed Joseph B. Stewart. The Doctor was much incensed against Stewart because he had not paid the note. He said he had been waiting on Stewart to get the money, and he had disappointed him. He had kept him from going away, which he had intended to do, until he had worn out all his clothes, and was not able to get more. Affiant asked him how he came by the note, and he said he had been doing business for Stewart and he had given him the note.

D. F. CLARK.

Jefferson County, sct.
Subscribed and sworn to, before me, May 15th, 1852.
JAMES J. DOZIER.
Notary Public.

R. F. Baird's Affidavit.

Affidavit of Robert F. Baird.

Robert F. Baird states, that some short time ago, W. R. Clarke and himself were together on the street in Louisville; that Dr. Peter Wood was in company on the street; a proposition was made that they should go to a coffee-house in the vicinity, and, being joined by another, they went thither.

After they had been there a short time, Dr. Wood spoke of his having a note on Joseph B. Stewart for $280, which he ought to have paid before then.

Witness asked him how the note came to be given to him. He stated that he had given his deposition in the case of Russell against Southard, by which Southard had lost his farm. He said that in the year 1822 or 1823, Russell had come here (to Louisville or its neighborhood) with sixty negroes, that he, Wood, had attended them as a physician at the request of Russell's Agent, Wingate Wing, until his bill for medical services amounted to $126; that he had also furnished them, at Wing's request, with meat and meal, and had lent some money; that all these things amounted to $280. That when Stewart, who said he was the agent, and attorney, in fact, of Russell, solicited him to give his deposition in the case, he refused to do so, unless he should be paid the $280 Russell owed him. Stewart agreed to pay it, and wrote and signed his own name to the note, and had not paid it. Witness remembers that when Dr. Wood spoke of his account of so long standing against Russell, William Clarke asked him if an account of so long standing as that would not run out of date. Affiant told him, Yes, it would. Wood then said, How can my account run out? I have got a judgment for the money, and the papers are in the magistrate's office. He said also that it was the very same note he had showed to J. J. Dozier to get him to collect.

ROBERT F. BAIRD.

STATE OF KENTUCKY,
Jefferson County, *sct.*

Subscribed and sworn to before me, May 15, 1852.

JAMES J. DOZIER,
Notary Public.

Russell's Letter to Wing.

Extract of a Letter from Russell to Wing, dated

"ALEXANDRIA, 19th Dec'r, 1827.

"You may say to Southard that I shall not re-purchase the estate. He may keep it, and Floyd and I will arrange between ourselves. Get Southard to say on paper that if the relinquishment of Mrs. Russell is not there next month it will do the month after. My youngest child prevented the removal of my family last month, and I shall not return for them some weeks. I shall, however, request her to execute a relinquishment, and send it by mail to W. Pope, the Clerk."

Truly extracted.
W. D. PAYNE.

16th January, 1828.

Russell's Deed to Stewart.

Copy Deed from G. C. Russell to Joseph B. Stewart.

This Indenture, made this the ninth day of April, 1852, between Gilbert C. Russell and Margaret, his wife, of the State of Alabama, of the first part, and Joseph B. Stewart, of the State of Kentucky, of the second part (the said Russell and the said Stewart being both now here in the City of Washington, D. C.), witnesseth, That the said Russell, for and in consideration of the sum of one dollar to him in hand paid, and for the consideration of divers sums of money at various times paid and advanced for the use and benefit of the said Russell by the said Stewart, and for the further consideration of professional services, rendered and performed by the said Stewart and others hereinafter named, and specially provided for in prosecuting a suit for said Russell against Daniel R. Southard and others, in the Circuit Court of the United States for the District of Kentucky, which was decided on appeal at the present term of the U. S. Supreme Court, hath bargained, granted, sold, and conveyed, and by these presents doth bargain, grant, sell, and convey unto the said Stewart, his heirs and assigns for ever, in fee simple, one full half part and undivided moiety of a certain tract or parcel of land, lying and being in the County of Jefferson, State of Kentucky, situate on the Bardstown Turnpike road, and bordering on the corporate limits of the City of Louisville, containing 216 acres (less one acre sold by Southard to the Louisville and Bardstown Turnpike Company, and not included in said decree), thus making the quantity of land herein conveyed to the said Stewart amount to 107½ acres. This being the same tract or parcel of land conveyed to the said Russell by Gov. John Floyd, of Virginia, and Letitia his wife, by deed, bearing date the 22d day of May, 1826, and which has been duly recorded in the Jefferson County Court Clerk's Office, to which deed reference is made for the boundary, &c. And in September, 1827, was conveyed in mortgage by said Russell to James Southard, deceased, designated and known on the recent map and plan of the City of Louisville and environs as the Southard tract. To have and to hold to him the said Stewart, his heirs and assigns for ever. And the said Russell doth covenant to warrant and defend the title to said undivided half against the claim or claims, right, title, and interest of any and all persons whomsoever. It being a part of this conveyance, nevertheless, that there is chargeable on the 107½ acres herein conveyed to said Stewart the debts hereinafter named, which debts are expressly affixed as incumbrances on said moiety, that is to say, a debt of $2,500 payable to the Hon. Henry Clay and the Hon. Joseph R. Underwood; also a debt of $2,500 payable to the Hon. Charles S. Morehead; also a debt of $5,000 payable to Judge Benjamin Monroe; also a debt of $1,000 payable to the Hon. George Robertson; also a debt of $500 payable to the Hon. James L. Harlan, the said Stewart having bound himself to pay them the debts aforesaid as their fees, amounting in all to the sums aforesaid, making altogether to the aggregate sum of eleven thousand five hundred dollars ($11,500), all of which is chargeable upon and payable out of the undivided moiety conveyed to said Stewart as aforesaid, he being allowed a reasonable time to make the most advantageous sale of said land, should it be necessary to resort to a sale to pay said debts, which said debts are to bear legal interest from and after one year from this date if not before paid.

And the said Russell further covenants to procure the relinquishment of his wife's dower to the moiety herein conveyed, as soon as the same shall be partitioned and set apart in equal portions and value. This deed, so soon as admitted to record, cancels and annuls all contracts and mortgages heretofore executed to the said Stewart for money or services, being adopted by the parties as a final settlement.

In testimony whereof the said Russell hath hereunto affixed his hand and seal, duly attested by witnesses, the day and year first above written.

GILBERT C. RUSSELL.

Witnesses present.
G. H. MONSARRAT, [SEAL.]
W. RAMSEY,
WALTER LENNOX.

DISTRICT OF COLUMBIA,
County of Washington.

Be it remembered that on this ninth day of April, in the year of our Lord, 1852, before the subscriber, mayor of the City of Washington, in the district aforesaid, personally appeared Gilbert C. Russell, in the city aforesaid, party grantor to the foregoing deed, dated the ninth day of April, 1852, and hereunto annexed, the said Gilbert C. Russell being well known to me as the person who executed the said deed, and acknowledged the same to be his act and deed.

[L. S.] In testimony whereof I have hereunto set my hand and affixed the seal of the City of Washington, the day and year aforesaid.

Attest, WALTER LENNOX.
WM. J. McCORMICK, *Register.*

I, Curran Pope, Clerk of the County Court of Jefferson County, in the State of Kentucky, do certify that on this day the foregoing deed was produced to me in my office, and being certified and acknowledged, I have recorded it therein. Witness my hand this twenty-first day of April, 1852.

A copy. CURRAN POPE.
Attest,
THOMAS A. MORGAN, *D. C.*

The following are the affidavits and documents read by the defendant, Russell, in opposition, upon the application to file the Bill of Review.

E. R. Deering's Affidavit.

Affidavit of Elias R. Deering.

STATE OF KENTUCKY,
Jefferson County.

Elias R. Deering, personally known to me, personally appeared and made his affidavit in the following words and tenor, to wit: On interrogation he states, that he had a short time ago several conversations with Daniel R. Southard, in reference to his suit with Gilbert C. Russell. He complained of injustice done him by the testimony of Dr. Peter Wood, in the case. He wished to procure a copy of a note given by Joseph B. Stewart, Esq., to Dr. Wood, for $280. He wanted some person to see *that* note, and he wanted, also, the admissions drawn from Dr. Wood about the note, and about the case generally, that could possibly be drawn from the Doctor. He wanted affiant to assist him in the matter, and told him that five hundred dollars were of no consideration with him, but that he could not offer the money to affiant, nor could affiant receive it. Affiant understood that Southard made him an offer indirectly, to use his time and skill in eliciting matters for testimony from Dr. Wood. He said Dr. Wood had several conversations with him in the presence of others, the substance of all which he set out in his former affidavit. Upon all these occasions Dr. Wood was liberally treated to brandy at the coffee-house of Willett J. Clarke, David F. Clarke, and David I. Johnson, and others, by persons who were endeavoring to assist this affiant in eliciting admissions from him. Mr. Southard directed me to make any arrangement for his benefit, and he would stand the expenses. In one instance he promised to pay expenses incurred in the coffee-house of Willett J. Clarke, when Dr. Wood was one of the party. This affiant believes that Southard has not paid this bill. He has been so informed by Mr. Clarke. The bill was three or four dollars.

Southard said that he could not offer money, lest it might disqualify affiant and render his testimony nugatory. But he said that he had means to use if he knew how to use them. This affiant then advised Southard to employ Mr. R. F. Baird as counsel, and reminded him that Baird was well acquainted with Wood, and would manage his case for him and direct him how to use his money, and save his witnesses intact from a suspicion of corruption. No money was paid to Baird, as this affiant believes, by Southard. Southard said that he had money himself for the benefit of those who would put themselves to trouble in this matter for his benefit, and that his son-in-law, Samuel D. Tompkins, had plenty of it, and when he returned from the eastern cities, whither he had gone for merchandise, he, Southard, would defray all expenses, and satisfy all his friends in the premises. He said he could obtain more means from Mr. Tompkins than what he then had.

This affiant put himself to a good deal of trouble in drawing admissions from Dr. Wood. When Mr. Baird and Mr. W. F. Clarke were present, this affiant put many questions to Dr. Wood, and so did Mr. Clarke, and his responses were carefully treasured up in this affiant's memory. Baird and Clarke were also careful to remember them.

In response to Dr. Wood, this affiant states that his course in this matter was not intended to disparage him; that he has known him for fifteen years and knows no harm of him, and is friendly with him: and that his agency in this matter, aside from his affidavit, was prompted by an expectation that Southard would pay him liberally for his trouble, and this expectation was raised by the positive promises of said Southard to reward him. And further affiant saith not.

E. R. DEERING.

Subscribed and sworn to before me, this 11th June, 1852.
ROBERT F. BAIRD,
Notary Public, Jefferson County.

I, Robert F. Baird, of the City of Louisville, a notary public duly commissioned for the County of Jefferson and State of Kentucky, do certify that Elias R. Deering, personally known to me, personally appeared and made the foregoing affidavit, and subscribed and was qualified to the same. Given under my hand and seal, this 12th June, 1852.

[L. S.] ROBERT F. BAIRD.

Elijah C. Clarke's Affidavit.

Affidavit of Elijah C. Clarke.

STATE OF KENTUCKY.
Jefferson County, sct.

Personally appeared before me, Elijah C. Clarke, who is personally known to me, and being of lawful age, upon oath states:

That some few weeks since Daniel R. Southard called at the coffee-house of David F. Clarke, in which establishment affiant is barkeeper, and proposed to this affiant to have an interview with Doctor Peter Wood, relative to a deposition which he said, said Wood had given in the trial of a suit in the Federal Court, between Gilbert C. Russell and himself. And also to see a note which he alleged had been given to said Wood by Joseph B. Stewart, Esq., for $280, and to obtain from said Wood any, and all possible admissions relative to the consideration for which said note was given, and relative to his, said Wood's deposition generally, which said statements when so obtained was to be reduced to an affidavit by this affiant, to be used by him, said Southard, in the Federal Court, on an application for a new trial or Bill of Review; for which service he, said Southard would amply compensate and pay this affiant. Affiant did not feel disposed to take any steps in the matter, but probably said he would interrogate said Wood relative to said matter, if an opportunity should offer. But no such opportunity did offer, and affiant asked said Wood no questions about the matter. Affiant further states, that after this request and proposal of the said Southard to him, that said Wood came into the coffee-house where he is employed in company with several other persons, who after taking a glass with said Wood commenced to interrogate him about the note and deposition alluded to. Affiant could not hear all that was said, as he was behind the bar, though he endeavored so to do, as he suspected that the object was to elicit matter to be used as proof upon the application aforesaid, from what said Southard had previously said to him, and from what he understood had been said to the other persons in conversation interrogating said Wood at the time. But as before stated he could not hear only sufficient to assure him that such was the subject of the conversation.

This conversation took place after night in the coffee house before-mentioned. The persons present at the conversation before-mentioned, were E. R. Dearing, Willett J. Clarke, and a third person not now remembered. And further, this affiant saith not.

ELIJAH C. CLARKE.

Subscribed and sworn to, before me, this 12th of June, 1852.

ROBERT F. BAIRD.
Notary Public, Jefferson County.

R. F. Baird's Affidavit.

Affidavit of Robert F. Baird.

STATE OF KENTUCKY,
Jefferson County.

This day personally appeared before the undersigned, a Justice of the Peace in and for the state and county aforesaid, Robert F. Baird, Esq., who upon oath states:

I gave an affidavit in the case of Russell against Southard and others, to be used as an application for a Bill of Review in the Federal Court, at the instance of Daniel R. Southard.

I had been repeatedly requested by Mr. Southard to have an interview with Dr. Peter Wood, in relation to his testimony previously given in said case. Mr. Southard told me that he would employ me as his counsel, but he made no arrangement to that effect.

One day I met with E. R. Dearing on the street, and Dr. Peter Wood and Willett J. Clarke by accident fell in company with us. Mr. Clarke invited Captain Dearing and myself to join him and Dr. Wood in a glass, at a coffee-house.

My attention was drawn by Mr. Clarke to a conversation about to be elicited from Dr. Wood. I guessed the purport of that conversation from having been previously spoken to by Mr. Southard.

Mr. Clarke was a friend of mine, and I readily listened to what was about to be said. What was said, I have substantially stated in my former affidavit in this application, with this exception, however, that Dr. Peter Wood most emphatically stated, that James Southard never had any title to the land in controversy. I understood by that that the Doctor meant he never had the fee simple, but that it was a conditional sale or mortgage from Russell to him. He stated that the matter was as distinct in his recollection as though it was but yesterday, and that what he had stated in his former deposition in the case was nothing but the truth.

I then procured of Messrs. Haggin and Harris, of my own accord, a printed decision of the Supreme Court of the United States in this case. I read where the Court alluded to Dr. Wood's testimony, and pointed it out to Dr. Wood; he read it with evident interest and reiterated the same statements to me as therein contained. Besides the two interviews I have just named, I had several other private interviews with Dr. Wood on the same subject, and in all these interviews, his statements in reference to this suit were substantially the same. He persisted in two things, to wit, that James Southard never had an absolute title to the land in question, and that the note given to him by J. B. Stewart, Esq., was given to him for a debt that Gilbert Russell had long and justly owed him.

Being interrogated, I answer.

Mr. Daniel R. Southard requested me to get a sight of that note, for the purpose, I suppose, of getting my affidavit in relation to it. I without hesitation indirectly declined taking any step in the matter. I did not wish to be a voluntary witness in the affair between Russell and Southard. That is to say, I did not wish to hunt up facts to prove for either party.

Upon being further interrogated, I answer.

That the conversation first alluded to in this affidavit, although accidental at the time, was just such an interview as had been planned by Mr. Southard through the agency of Mr. Clarke and others. Mr. Clarke seemed to sympathize with Mr. Southard in his difficulties, and seemed disposed to render him service. From what I could observe, Mr. Southard seemed to place confidence in Mr. Clarke's affidavit, and wanted the affidavit of some other disinterested person to corroborate him, and hence, the conversation with Mr. Wood was elicited in my presence. Mr. Daniel Rapalge is a nephew of Mr. Southard, and had given an affidavit in this cause. And Mr. Dozier, from whom an affidavit was expected, or had been given, was counsel in some way or other in the matter. There seemed to be a desire on the part of Mr. Southard, on that account, to have the affidavit of Mr. Willett Clarke and some one else in corroboration.

Being further interrogated, I answer,

That the conversation first alluded to took place four or five days previous to my first affidavit in the matter, and took place in the coffee-house owned by David F. Clark, who, I also understand, has given an affidavit in this case. Mr. D. F. Clark was not present at that time. He is a brother of Willett J. Clark alluded to in this affidavit heretofore.

And being further interrogated, I answer,

Willett J. Clark keeps a coffee-house and restaurant, at which Mr. John Rapalge, brother of Daniel Rapalge, and nephew of Mr. Southard, is a barkeeper.

Being further interrogated, I answer,

In casual conversations with Mr. Willett J. Clark, Mr. Clark informed me that Mr. Southard had been most importunate with him to do something for him, Southard, in the way of eliciting facts in reference to Dr. Peter Wood's testimony, to be made use of on this application for a Bill of Review, so that Southard might obtain a change in the decree of the Supreme Court of the United States in regard to his land; and that owing to Southard's age and these importunities, he was industrious to draw forth from Dr. Wood such statements as might be conducive to Southard's benefit, and in such manner as those statements, when reduced to affidavits, might procure the desired end.

Upon being further interrogated, I answer,

In the various conversations I had with Dr Wood in reference to this matter, the old gentleman left no other impression upon my mind than of the utmost sincerity on his part that what he had stated in his deposition, previously given, was true. I canvassed Dr. Wood upon this subject; he was consistent in all his statements, and, from all that I could perceive, was evidently sincere, and if any impression from my former affidavit might be left upon the mind of any person, inducing the belief that that affidavit was designed by me to disparage Dr. Wood in any way, I disclaim it; and further saith not.

ROBERT F. BAIRD.

Subscribed and sworn to before me, this 10th day of June, 1852.

JOS. CLEMENTS,
J. P. J. C.

J. B. Stewart's Affidavit.

Affidavit of Joseph B. Stewart.

Joseph B. Stewart makes oath that he is informed, and verily believes that D. R. Southard, before taking the affidavit of D. S. Rapalge, which has been read to the Court on the present application to file a Bill of Review, did take a former affidavit of said D. S. Rapalge, which was written out by one James J. Dozier, which last-mentioned affidavit has been withheld, and was not read to the Court. He states that he believes said first affidavit will, if produced, operate favorably to Colonel G. C. Russell, for whom this affiant is agent. He further states the same facts exist, as he believes, in respect to the affidavit of W. J. Clark, which has been read, and that the first affidavit of Clark, if produced, will be of advantage to Russell on this application, and will materially destroy the effect now attempted to be given to said Clark's affidavit read to the Court.

He further states that he is informed and believes that the said Rapalge is a nephew of said Southard, and is one of the party who was employed to aid in eliciting facts from said Wood, and is one of the persons present at the interviews named in the affidavits of Clark, Baird, and others.

JOS. B. STEWART.

Sworn to, in open Court, by J. B. Stewart, June 15th, 1852.

Att., JOHN A. MONROE,
C. C. C. K. D.

Philip Richardson's Affidavit.

The Affidavit of Philip Richardson.

UNITED STATES, KENTUCKY DISTRICT,
City of Louisville.

This day, Philip Richardson *came* personally appeared before me a Commissioner of the United States for Affidavits, Bail, &c., duly qualified, and acting as such in and for said district, and residing in said city, and made oath that some time in the latter part of the winter or spring of the year 1828, James Southard met me and proposed to rent to me the farm (whereon James and Daniel Southard afterwards resided, and on which said James died, and which is, as I deem, in contest in the case of Gilbert C. Russell against Daniel R. Southard and others, now in the United States District Court of Kentucky, and recently in the Supreme Court of the United States), for $125 for one year; this proposition was made on a Saturday, on the next day (Sunday), we met on the land, viewed the fencing and premises generally, and agreed upon the terms, and on the next day

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(Monday), we entered into writings, and in a week or ten days after we bargained, I took possession of the place, all except the dwelling-house and its yard and garden, which Southard reserved for his own use. After I got on the place, I moved Daniel Southard's family to the house with my own team; and Daniel and James Southard lived there that summer.

After renting the place, and the bargain fixed, I asked James Southard why he had rented it to me so low. He replied that he wanted a briar thicket cleared up, which I would be compelled by my contract to do, and besides everybody thought that Russell would redeem it; and because of this supposition (that Russell would redeem it), it was so late in the season before he could get a tenant. There were frequent conversations between James Southard and myself during the summer. We were on friendly terms, and so our conversations were frequent; and some time in the fall I undertook to feed on the farm 1,500 hogs for McIlvaine; while feeding them, I left home on business, and Daniel Southard let the hogs out. I collected the hogs back into the same lot, and Daniel Southard and myself met violently. I let him know that the farm was not his (meaning that I had rented it); but I suppose he thought that I had allusion to Russell's claim, for he replied that the day had gone by for Russell to redeem. I then said that it was neither his nor Russell's; my year was not out; I held the possession of the place until the 1st January, 1829, and after paying negro hire, blacksmith's bills, and all expenses, I had cleared $1,021. And further this affiant saith not. Signed,

PHILIP RICHARDSON.

I, William S. Pilcher, commissioner aforesaid, certify that this first day of May, 1852, I took the foregoing affidavit of Philip Richardson. He is well known to me; sixty-seven years old; that I first duly cautioned and swore him, and in his presence wrote down said affidavit. That I am of kin to neither party, nor counsel or attorney for neither, or in anywise interested in the controversy,—in the case of Gilbert C. Russell against Daniel R. Southard and others,—in which this affidavit is to be used. Witness my hand, having no seal, the day and year aforesaid.

W. S. PILCHER,
Commissioner of U. S. K. District of Affidavits, &c.

Willett J. Clark's Affidavit.

The Affidavit of Willett J. Clark.

This affiant, Willett J. Clark, personally known to me, personally appeared and made this affidavit in the following words and tenor, to wit:—

I have given an affidavit in this case heretofore, at the instance of Daniel R. Southard,—I mean the case of Russell *vs.* Southard. I had observed Mr. Southard at my coffee-house frequently some two weeks ago, and on several occasions he inquired of me if Capt. Elias R. Deering had addressed me on the subject of his (Southard's) suit with Russell: on these occasions I replied that he had not. Afterwards Deering spoke to me on the subject privately, and I agreed somewhat for the accommodation of Deering, who is a friend of mine, to ply Dr. Wood on the subject of a note given Wood by Joseph B. Stewart, Esq.. I was well acquainted with Wood, and had various conversations with him, the substance of which I have detailed in my former affidavit. To be more explicit as to my first interview with Southard, alluded to: Southard would come into my bar-room and ask me "if Deering had been there?" "if Deering had had any interview with me of a private nature?" I would reply, that he had not. On one of these occasions when Southard was in, Deering came in, and took me to one side and explained the matter, which I found to be the matter and things relating to this suit, as before stated.

Southard had been frequently about my bar-room for several days previously to the time of the incidents related, before he spoke to me of the business of a "private nature." When Deering spoke to me, he told that this business would be profitable; that Southard would pay well for any trouble that a man would put himself to on account of this suit, and urged me to assist him in his agency to find material for proof in the case. I replied that I would do anything honorable to accommodate him, but that I wanted no compensation for my services. That what I did I would do gratuitously. And I did see Dr. Wood, and drew from him the admissions as I have stated in my affidavit. My agency in this matter was not dictated by any desire of pecuniary profit for myself, but I was glad to assist Capt. Deering in an enterprise that would be profitable to him. I also felt a sympathy for Southard, on account of his age, and the manner in which he would recount his difficulties.

Dr. Peter Wood was much in my coffee-house whilst these things were going on, and during these occasions he drank freely, and I charged him nothing, nor did I charge anybody else for his drinks. Whatever Southard may have said to others on the subject of paying these little expenses, he said nothing to me on the subject, and I do not look to him for it. I did it, as I said before, as a matter of accommodation. I did not expect to give an affidavit when I was initiated into this matter, but after awhile I was led to suspect that Southard was playing for my affidavit, and then I could not and would not have accepted any compensation from Southard if the same had been offered. I used the word "day" in reference to the visits of Southard to my coffee-house, I, perhaps, should have said

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"night;" his visits on the occasions alluded to were invariably in the night. I deem it but justice to Dr. Wood to state that I have known him from my boyhood, and that he has attended my father's family as a physician, and my course towards Wood was not dictated by any disrespect towards him. He was in better circumstances when I first knew him than he is now, and once was esteemed a gentleman, as much so as any man. Nor can I say anything now to his discredit; he is, however, fond of drink, and when excited by liquor, is very garrulous on the subject of his travels and adventures. And further affiant saith not.

W. J. CLARK.

Subscribed and sworn to before me, this 12th June, 1852.

ROBERT F. BAIRD,
Notary Public, Jeff. Co., Ky.

I, Robert F. Baird, of the City of Louisville, a notary public, duly commissioned and qualified, for the County of Jefferson, and State of Kentucky, do certify that Willett J. Clarke, personally known to me, personally appeared and was qualified to the foregoing affidavit. Given under my hand and seal, this 12th June, 1852.

[L. S.] ROBERT F. BAIRD.

Copy Record. Burks vs. *Southard.*

Copy Record. Burks *vs.* Southard.

COMMONWEALTH OF KENTUCKY,
Louisville Chancery Court, sct.

Pleas before the Honorable Henry Pirtle, Chancellor and Sole Judge of the Louisville Chancery Court, at the Court House in the City of Louisville, on the 31st day of October, 1851.

MATILDA BURKS and WILLIAM R. THOMPSON, Plaintiffs.
vs.
DANIEL R. SOUTHARD and SAMUEL D. SOUTHARD, Defendants.
} In Chancery.

Be it remembered that on the 17th day of January, 1851, came the plaintiffs, by their counsel, and filed in the Clerk's Office of the Court aforesaid, the following bill, to wit.

Bill.

To the Honorable Judge of the Louisville Chancery Court, your oratrix, Matilda Burks, and your orator, William L. Thompson, would respectfully state to your Honor that on the 16th December, 1844, Daniel S. Southard and wife conveyed in mortgage to your orators, and others, a certain lot in Louisville, and farm and other property more fully described in said mortgage, and made a part hereof, and in which mortgage your oratrix, Matilda, was secured a debt of $2219, with interest, as therein stated, and your orator, Thompson, as guardian for John Burks, James Burks, Samuel Burks, Charles, Burks, and Nanny Burks, was secured sundry debts as therein stated, and in said mortgage one James Guthrie and Joseph R. Tunstall had debts secured to them. Your orators state, that on the 25th January, 1846, they filed a bill in this Honorable Court against said Southard, Guthrie, Tunstall, &c., and which suit was consolidated with a suit in said Court, of Wm. Pope's Executor, against Southard, &c., No. 5124, and which suits and the record and proceedings had therein are made a part hereof; that in said suits your oratrix, Matilda, obtained a decree for the interest on her said debt up to the first of January, 1847, and has made the amount of said decree in her favor, as fully appears in said suit, No. 5194, and the amount now due her and unpaid of said mortgage debt is $2219, with interest thereon from the first January, 1847, until paid. And your orator, Thompson, states, in said suit he obtained a decree for the full amount due him, and secured in said mortgage, as guardian to John Burks, and for the interest owing his other wards, secured in said mortgage, up to the first of January, 1847, and received the same, as fully appears in said suit. And he charges there as now due and unpaid to him as guardian to James Burks, $1630 16⅔ cents, due 12th January, 1851; and $97 80, with interest from first January, 1848; $97 80, with interest from first of January, 1849; $97 80, with interest from first of January, 1850; $97 80, with interest from first of January, 1851, and said $1630 16⅔, with interest from said first January, 1851. Also, as guardian of Samuel Burks, the sum of $97 80, with interest from first January, 1848; $97 80, with interest from first of January, 1849; $97 80, with interest from first of January, 1850; $97 80, with interest from first of January, 1851.

Also as Guardian to Charles Burks.

$97	80	with	Interest	from	1st	January,	1848.
97	80	"	"	"	"	"	1849.
97	80	"	"	"	"	"	1850.
97	80	"	"	"	"	"	1851.

Also as Guardian to Nancy Burks, the sum of

$97 80 with Interest from 1st January, 1848.
97 80 " " " " " 1849.
97 80 " " " " " 1850.
97 80 " " " " " 1851.

All of which said sums are now due and unpaid. And a like sum of $97 80 will fall due to your Orator Thompson, as Guardian to said Samuel, on the 1st January, 1852, and a like sum on the 1st January, 1853, and $1630 16⅔ will be due the 10th January, 1853, and carries interest from 1st January, 1853. Also, $97 80, as Guardian to Charles Burks, with interest from 1st January, 1852. A like sum with like interest from 1st January, 1853, in each of the years 1853, 1854 and 1855, and $1636 16⅔ due 8th January, 1855, with interest from 1st January, 1855. Also as Guardian to Nancy Burks, $97 80 with interest from the 1st January, 1852, a like sum with like interest on same from 1st January, in each of the years 1853, 1854, 1855, 1856, 1857, and 1858, with interest from 1st January, 1858, all of which are secured in said mortgage, and will fall due as aforesaid, and are all now unpaid. Your Orators state and charge, that the debt secured in said mortgage to said Guthrie, is paid to him as shown in said suit, No. 5194, and the debt to said Tunstall secured in said mortgage, is fully paid to him, by Samuel D. Tompkins for defendant, Daniel R. Southard, and with his means and by said Southard. And the debt to Pope's executors, is fully paid to said executors, as fully appears in said suits No. 5124 and 5194, and said Tompkins claims 31 acres of the farm included in said mortgage, but said Tompkins made his said purchase with full knowledge of your Orator's mortgage on said land, and they here make part hereof, all the allegations in their bill in suit No. 5194, and make said Southard and said Tompkins defendants, hereto pray process against them, and require them to answer. And they pray said mortgages be foreclosed, and the property unsold, as is shown in the suits aforesaid, or so much as may be necessary be sold to pay your Orator's demands aforesaid, with interest and costs, and they pray for general and equitable relief, &c.

GUTHRIE AND TYLER,
P. Q.

And thereupon process was issued, the original of which does not appear among the papers, upon which was made the following return, as appears from the Docket, to wit,

"Executed on Samuel D. Tompkins 17th, and on Daniel R. Southard, 27th January, 1851, copies delivered," which mortgage referred to in the foregoing Bill is as follows, to wit.

Southard's Deed to Burks, &c.

This Indenture, made this 16th day of December, 1844, between Daniel R. Southard in his own right and as executor and devisee of James Southard, deceased, and Elizabeth his wife, of the first part, and William L. Thompson, Joseph R. Tunstall and Matilda Burks, of the second part, Witnesseth, that the said first parties, for, and in consideration of one dollar, to them in hand paid, the receipt from the said second parties are hereby acknowledged, they have granted, bargained and sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do grant, bargain and sell, alien, release, enfeoff, convey, and confirm, to said second parties, and to their heirs and assigns, for ever, a lot of half an acre in the City of Louisville, and in Preston's enlargement thereof, and is numbered 42 in the plan of said enlargement. Also part of half an acre lot number 56 on said enlargement, bounded as follows, to wit, beginning at the southeast corner of said lot on the west side of Floyd Street, at an alley, thence with said alley fifty-two and a half feet, thence at right angles, northwardly, thirty-four feet, thence eastwardly, fifty-two and a half feet to Floyd Street, thence with the same southwardly, and binding thereon, thirty-four feet to the beginning. Also, two hundred and fifteen acres of land in Jefferson County, on the waters of Beargrass Creek, and on the Louisville Turnpike road, and now occupied by said Daniel R. Southard. Also, all of the said Southard's household and kitchen furniture. And also the following negroes, to wit, Bob, Ben, Henry, Peggy, Eliza, Margarett, Mary, and Eve, Fanny, and all the estate, right, title, claim, interest, and fee, of said first parties of, in, and to the same. To have, and to hold the same unto the said second parties, and to their heirs and assigns, to their only proper use, benefit, and behoof, for ever. And said parties do covenant and agree to, and with the said second parties, and with their heirs and assigns, that they will, and their heirs, executors, and administrators shall warrant, and for ever defend said property, real and personal, unto said second parties, and to their heirs and assigns for ever, against all and every person or persons, whatever, lawfully claiming, or to claim the same. Provided, however, and these presents are on this condition, that whereas, the said D. R. Southard is justly indebted to said Matilda Burks, in the sum of twenty-two hundred and nineteen dollars, with legal interest thereon, from the 14th August, 1843, and due the 1st day of May, 1848, the interest to be paid on the 1st day of January, 1845, and on the first day of each succeeding year thereafter. Also, said Southard is justly indebted to said Tunstall, in the sum of four hundred and eighty-one dollars and forty-three and two-third cents, with legal interest from said 14th August, 1843, till paid. Also to James Guthrie, in the sum of eleven hundred and forty-eight dollars and seventy-three cents, with interest from said 14th August, 1843. Also, to said Thompson as Guardian to John Burks, in the sum of sixteen hundred and thirty dollars and sixteen and two-third cents, with legal interest from said 14th August, 1843, till paid, due 18th May, 1845. Also, as Guardian to James Burks, in the like sum, with interest from the same day, due 12th January, 1851. Also as Guardian to Samuel Burks, the like sum, with interest from the same day, due 10th January, 1853. Also, as Guardian to Charles Burks in the like sum, with interest from the same day, due 8th January, 1855. And also, as Guardian to Nancy Burks, in the like sum, with interest from the same day, due 5th January, 1858. The interest on each of said five last-mentioned sums, to be paid up to and on the 1st January, 1845, and on the 1st day of January, in each year thereafter, on the respective sums until they respectively fall due. And it is agreed between the parties hereto, that if said Southard should sell any of said property, that said second parties will release this mortgage for such part so sold, on receiving the consideration for which the same was sold, and the notes given for the time, payments not extending beyond the time the debts herein secured fall due. Now should said Southard, his heirs, executors, administrators, well and truly pay the debts due to said Tunstall and Guthrie when required, and the interest and principal of the debts to Matilda Burks and Thompson as Guardian aforesaid, as herein agreed, and as the same falls due, then this conveyance to be void, else to be and remain in full force, and when these debts are paid, the notes of said Southard for the purchase of the lots No. 42 and No. 56, given in a suit in Chancery, in the Louisville Chancery Court, of James Burks' administrator against James Southard's executors, and heirs, will be fully satisfied, as also the balance due on the decree in said case.

In witness, whereof, said Southard, and wife, set their hands and seals, on the day and year aforesaid.

DANIEL R. SOUTHARD. [SEAL.]

In his own right, and as executor and devisee of James Southard.

ELIZABETH SOUTHARD. [SEAL.]

I, Curran Pope, Clerk of the County Court of Jefferson County, in the State of Kentucky, do certify that on this day the foregoing deed, from Daniel R. Southard, in his own right, and as executor and devisee of James Southard, deceased, and Elizabeth Southard, wife of said Daniel, to Matilda Burks, Joseph R. Tunstall, and William L. Thompson, Guardian, was produced to me in my office, and acknowledged and delivered by said Daniel in his own right, and as executor and devisee as aforesaid, to be his act and deed, and by the said Elizabeth to be her act and deed; that I examined the said Elizabeth privily and apart from the said Daniel her husband, and having shown and explained said deed to her, she declared that she had signed, sealed, and acknowledged, and delivered it freely and willingly, without the persuasions, threats, or compulsion of her said husband, that she was willing it should be recorded, and did not wish to retract her said acknowledgments. And that I have recorded the same in my said office. Witness my hand, this sixteenth day of December, eighteen hundred and forty-four.

CURRAN POPE.

Set for Trial.

And at a Court, held as aforesaid, on the 31st day of March, 1851, ordered that this cause be set for trial here on Friday next, the 28th instant.

And at a Court held as aforesaid, on the 31st day of March, 1851, came the complainants by their counsel, and by leave of the Court filed an amerced bill herein. And thereupon this cause came on to be heard, and was submitted; but the Court not being advised, took time, &c.

Amerced Bill.

Which Amerced Bill is as follows, to wit:

Complainants amend their bill thus: Complainant Matilda Burks admits the full amount of her debt, in the bill mentioned, of $2,219, and interest thereon, is fully paid to her by Southard, or his son-in-law, Rawlings, and she has no lien or claim against defendant Southard, or his property, on that account; and complainant Thompson, as guardian of Samuel, James, Charles, and Nancy Burks, received of Southard, or his son-in-law Rawlings, in part of the said mortgage debt, on the 9th November, 1848, four hundred and eleven dollars, eight cents, for which a voucher was given, and he prays as heretofore.

W. L. THOMPSON,
Guardian, &c.
MATILDA BURKS.

Decree.

And at a Court held as aforesaid, on the 11th April, 1851, the Court being now advised, and this cause having been heard on the bill and the amerced bill,

It is decreed that the defendants pay to the complainant Thompson, Guardian, &c., the sum of sixteen hundred and thirty dollars, sixteen and two-third cents, with interest, at the rate of six per centum per annum, till paid, from the 1st January, 1851. And also ninety-seven dollars and eighty cents, with like interest, from the 1st January, 1848, till paid; and ninety-seven dollars and eighty

2465.

cents, with the same, from the 1st January, 1849, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1850, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1851, till paid; and also ninety-seven dollars and eighty cents, with same, from the 1st of January, 1848, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1849, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1850, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1851, till paid; and also ninety-seven dollars and eighty cents, with same, from 1st January, 1848, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1849, till paid; and ninety seven dollars and eighty cents, with same, from 1st January, 1850, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1851, till paid; and also ninety-seven dollars and eighty cents, with same, from 1st January, 1848, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1849, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1850, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1851, till paid; also the further sum of ninety-seven dollars and eighty cents, with same, from 1st January, 1848, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1849, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1850, till paid; and ninety-seven dollars and eighty cents, with same, from 1st January, 1851, till paid; subject to a credit of four hundred and eleven dollars, and eight cents, paid 9th November, 1848, which payments shall be made in ninety days. And, unless the same shall be so done, the Court will order the premises mentioned in the bill to be sold, or so much thereof as may be necessary to raise the same, with costs of suit and of sale.

Decree of Sale.

And at a Court held as aforesaid, on the eleventh day of July, 1851, the Court being advised, and the money not having been paid, as permitted by the interlocutory decree rendered herein:

It is now decreed and ordered that the Marshal of this Court do sell the property in the bill, exhibits, and interlocutory decree, mentioned, or so much thereof as may be necessary to pay the amount of said decree, with costs of suit and of sale, on a credit of four, eight, and twelve months, for equal parts of the purchase-money, first advertising the same at least ten days by handbills, posted at the door of the court-house, post-office, and upper middle market-house, in the city of Louisville, the purchaser to give bond with approved security, payable to Thomas P. Smith, Master in Chancery, and his successors in office, bearing interest from the day of the sale, and a lien to be returned on the property sold, as additional security, and make report to Court. But the Marshal is directed not to sell any of the lands conveyed by Southard to S. D. Tompkins, as shown in the deed filed in the suit referred to in complainant's bill, until the further order of the Court.

And at a Court held as aforesaid, on the 12th day of September, 1851, came the Marshal, Henry Dent, and produced his report of sale herein, also his charge of $51 82 therefor, which are ordered to be filed, and laid over one week for exceptions. And on the same day came D. R. Southard, by his counsel, and filed the following consent of sale, to wit: "In this case, part of my farm in Jefferson County was sold by the Marshal, and bought by W. L. Thompson. I consent to a confirmation of the sale, and desire that the sale stand.

"DANIEL R. SOUTHARD."

Report of Sale.

Which report of sale is as follows, to wit:

In obedience to a decree of the Louisville Chancery Court, rendered in the cause of William L. Thompson and Matilda Burks against Daniel R. Southard, &c., I did, on the 22d day of August, 1851, advertise, as directed by said decree, ten days before the day of sale, the property in the bill, exhibits, and interlocutory, mentioned in said decree, sale to take place before the court-house door, in the city of Louisville, on Monday, the first day of September, 1851. And Daniel R. Southard, by his written instructions to the Marshal, did authorize the sale of the tract of land in the bill mentioned, or so much thereof as would pay the complainant's debt, and costs of suit and sale, the said instructions are herewith filed and marked (*D.*), and made a part of this report. And on the said first day of September, 1851, I appeared at the court-house door aforesaid, about the hour of eleven o'clock of said day, and offered at public outcry the land mentioned above, or so much thereof as would satisfy the complainant's debt, and costs of suit and sale. And William L. Thompson bid, individually and in his own right, the sum of $3041 56 (three thousand and forty-one dollars and fifty-six cents) for 70 acres of the land described in Southard's instructions to the Marshal; his being the best bid offered, and no one offering to pay the debt, and cost of suit and sale, for a less number of acres, though offered and cried in that way, it was struck off to him at that price; the said William L. Thompson being entitled to the money in that cause, and his bid not exceeding the amount decreed in his favor, no bond was taken from him for the purchase of said land. The Marshal herewith returns copies of decree, and advertisement of sale. All of which is respectfully reported.

HENRY DENT,
M. L. C. C.

The paper marked "*D.*," referred to in the foregoing report, is as follows, to wit:

"*D.*" *filed with Report.*

Henry Dent,
Marshal of the Louisville Chancery Court.

Sir:—In the suit, Burks and William Thompson, &c., against myself, &c., you will offer for sale the farm described in a mortgage in said suit, or so much thereof as will pay the decree, and should a less quantity than the whole satisfy the decrce, you will lay it off on the northwest side, and adjoining the line of a thirty-six acre tract, purchased by Wm. Pope, deceased, and claimed by his executors, &c., W. H. Pope, since, and fronting on the Turnpike Company and Pike, about seventy-seven poles northwest of the line of what is called the Slaughter farm.

DANIEL R. SOUTHARD.

Sept. 1, 1851.

The following paper was filed with report of sale, to wit:

$97 80	from Jan. 1, 1848, to 9th Nov. 1848, 9 mo., 9 days,	$4 56
97 80	" " 1848, " " 1848, " "	4 56
97 80	" " 1848, " " 1848, " "	4 56
97 80	" " 1848, " " 1848, " "	4 56
$391 20		$18 24
18 24		

$409 44 credit, 9th Nov. 1848, by $411 08. Overpaid $1 64.

$1630 16	Interest from 12th Jan. 1851, till Sept. 1, 1851,	$62 21
97 80	" " 1st " 1849, " " "	15 68
97 80	" " " " 1850, " " "	9 80
97 80	" "	3 92
97 80		15 68
97 80		9 80
97 80		3 92
97 80		15 68
97 80		9 80
97 80		3 92
97 80		15 68
97 80		9 80
97 80		3 92
$2803 76		$179 81

Principal,		$2803 76
Interest,		179 81
		$2983 57
By amt. overpaid, 9th Nov. 1848,	$1 64	
Int. on same, 2 years, 9 mo.,	0 18	
		1 82
		$2981 75
Bills,		2 00
Commission,		49 82
Clerk's Costs,		7 81
		$3041 38

The following advertisement was filed with said report, to wit:

Notice of Sale.

"Marshal's Sale."

William L. Thompson, and
Matilda Burks,
vs.
Daniel R. Southard, &c.
} In Chancery.

By virtue of a decree of the Louisville Chancery Court, rendered in the above cause, the undersigned or one of us, will on Monday the first day of September, 1851, sell to the highest bidder at public auction, before the court-house door in the City of Louisville, on a credit of 4, 8, and 12 months for equal parts of the purchase-money, (or so much thereof, as may be necessary to raise the amount decreed to be raised, to wit): a lot of ground in the City of Louisville, commencing on the N. E. Corner of Market and Floyd streets, and running eastwardly 35 feet 6 inches, and extending back the same width 120 feet, to a ten feet alley, and known on the plot as lots Nos. 1 and 2, of subdivision of half acre lots No. 42, in Preston's enlargement referred to in this case; also one lot of ground commencing on the north side of Market Street, in the City of Louisville, 90 feet east of the corner of Floyd and Market Streets, and running parallel and eastwardly on Market Street 15 feet, and running back the same width 120 feet, to a 10 feet alley, and known on the above named plot as Lot No. 6. Also, a lot of ground on the south side of an alley running from Floyd to Preston Street, in the City of Louisville, and commencing 86 feet 6 inches from Floyd Street, and running eastwardly on said alley 18 feet 6 inches, and running back southwardly the same width 59 feet, to a 10 foot alley, and known on the above named plot as lot No. 12. Also, a tract of land containing 215 acres in Jefferson County, Kentucky, on the waters of Beargrass Creek, and on the Turnpike road leading to Bardstown from Louisville, and being the same occupied by Daniel R. Southard, in December, 1844, except the thirty-one acres referred to in the answer of the defendant Samuel D. Tompkins. Also, the slaves Eliza, Margaret, Henry, Mary, Eve, Denny, Ben, Bob, Peggy, and Fanny. Also, 2 bay horses, carriage and harness, 1 hay wagon, and 2 yoke of oxen. Also, all of said Daniel R. Southard's household and kitchen furniture, consisting of 4 carpets, 4 rugs, 5 looking glasses, 1 mantel glass, 1 mahogany sideboard, 1 pair mahogany dinner tables, 1 pair mahogany tea tables, 1 pair mahogany card tables, 2 mahogany sofas, 2 dozen mahogany chairs, 1 dozen rush-bottom chairs, 1 white mantel time-piece, 4 beds, bedsteads, and bedding, 1 cherry bookcase, 2 pair plated candlesticks, 1 pair plated branch candlesticks, 9 silver tumblers, 1 dozen silver tablespoons, 1 dozen silver dessert spoons, 1 dozen silver teaspoons, 1 caster, 5 waiters, 4 decanters, 1 dining set Liverpool ware, 1 china tea set, 2 pairs snuffers and trays, 1 set knives and forks, &c. ☞ The whole of the foregoing described property, being the same contained in the mortgages of said Daniel R. Southard to Matilda Burks, and others of the 18th November, 1843, and 16th December, 1844, and filed in the above cause. Purchasers to give bond with good security, bearing interest from day of sale until paid, and a lien will be retained on the property as additional security. Sale to take place about 11 o'clock of said day.

HENRY DENT,
M. L. C. C.
HENRY WOLFORD.
Deputy.

Louisville, Kentucky, August 22d, 1851.

And at a Court held as aforesaid on the 19th day of September, 1851, came Charles Ripley for Cushing's administrator, and filed his petition to open the biddings in the cause, and offered H. S. G. Ronald as his surety to comply with his offer, whereupon it is ordered that the biddings herein be opened, and that the Marshal resell said property upon the same terms, and after the like notice, as heretofore directed, &c.; in the event of no one offering higher, he is directed said Ripley as the purchaser.

Which petition is as follows to wit:

Petition to Resell.

I move on behalf of Cushing's administrator, to set aside the sale made September 1, 1851, in this cause of seventy acres of land. I have charge of a suit for him against Southard in this Court, in which I am seeking to subject Southard's property to the payment of his debt, and am unwilling to see his estate sacrificed. The bid reported is far less than one-third of the value of the property. I therefore move, that the biddings be opened. I will pay the amount decreed to be raised for forty acres, of the seventy acres cried off for the same.

CHARLES RIPLEY.

I agree to be surety that Charles Ripley shall make the foregoing bid offered above, at the resale, if a resale is ordered, and that he shall comply with the terms of the sale if he is the purchaser at that price.

F. S. J. RONALD.

And at a Court held as aforesaid, on the 17th day of October, 1851, came Charles Ripley in proper person, and on his motion leave is given him to withdraw his proposition to open the biddings herein, and thereupon this cause came on to be heard, and was submitted on the report of sale, but the Court not being advised took time, &c.

And at a Court held as aforesaid, on the 24th day of October, 1851, the Court being now advised, and the report of sale herein submitted without exceptions thereto, having been examined, is approved and confirmed, and the Commissioner is directed to make a deed to the purchaser.

And at a Court held as aforesaid, on the 31st day of October, 1851, came the Commissioner and produced a deed prepared by him, to the purchaser William L. Thompson, which was examined and approved by the Chancellor, and executed and acknowledged by the Commissioner, for and on behalf of the grantees therein named, to be his act and deed. Whereupon, it is ordered that said deed be recorded by the Clerk of this Court, and be by him certified for record. And said Commissioner is allowed five dollars for executing said deed, to be paid him by the purchaser.

COMMONWEALTH OF KENTUCKY,
Louisville, Chancery Court, sct.

I, Charles J. Clarke of said Court, do hereby certify, that the preceding nineteen pages (this included), contain a true and complete transcript of the record and proceedings had in the cause between the parties therein named. Witness my hand, this 1st day of June, 1852, and in the 61st year of the Commonwealth.

Parties live in Jefferson County.

CHARLES J. CLARKE.

Fee, $4 00.

The following is the opinion of the Supreme Court of the U. S. upon a motion for a new hearing, and of the affidavits thereto attached, read by Russell in opposition, upon the application to file a Bill of Review.

Opinion on Petition for New Hearing in Supreme Court, U. S.

Supreme Court of the United States, December Term, 1851.—
No. 24.

GILBERT C. RUSSELL, Appt.
vs.
DANIEL R. SOUTHARD, et al.
On appeal from the Circuit Court of the United States for the District of Kentucky.

Mr. Crittenden, of counsel for the appellees, moved the Court for a rehearing of this cause: whereupon this Court, not being now here sufficiently advised of and concerning what order to render in the premises, took time to consider.
February 20, 1852.

Mr. Chief Justice Taney delivered the opinion of the Court.

The decree of the Circuit Court in this case was reversed during the present term, and a decree ordered in favor of the appellant. A motion is now made in behalf of Daniel R. Southard, one of the appellees, to set aside the decree in this Court, and to remand the case to the Circuit Court for further preparation and proof, upon the ground that new and material evidence has been discovered since the case was heard and decided in that Court. In support of this motion, affidavits have been filed, stating the evidence newly discovered, and that it was unknown to him when the case was heard in the Court below. It is very clear that affidavits of newly discovered testimony cannot be received for such a purpose. This Court must affirm or reverse upon the case as it appears upon the record. We cannot look out of it for testimony to influence the judgment of this Court, sitting as an appellate tribunal. And according to the practice of the Court of Chancery, from its earliest history to the present time, no paper not before the Court below can be read on the hearing of an appeal. Eden *vs.* Earl Bute, 1 Br. Par. Cases, 465; 3 Br. Par. Cas. 546. Studwell *vs.* Palmer, 5 Page, 166.

Indeed, if the established Chancery practice had been otherwise, the Act of Congress, of March 3, 1803, expressly prohibits the introduction of new evidence in this Court, on the hearing of an appeal from a Circuit Court, except in admiralty and prize causes.

The motion is therefore overruled.

On consideration of the motion made by Mr. Crittenden in this cause on a prior day of the present term, to wit, on Friday, the 20th ultimo, and of the affidavits filed in support thereof, it is now here ordered by the Court, that the said motion be and the same is hereby overruled.

March 1, 1852.

SOUTHARD *vs.* RUSSELL. } Pending in Supreme Court U. S., on a petition for rehearing.

I, Daniel R. Southard, present herein the affidavit of Thomas G. Addison, showing that the witness, Peter Wood, whose deposition was read herein for Russell, was bribed by him or his attorney, Stewart. Though I always suspected the bribery, yet I never knew until within the last few weeks that it could be proved. I have delayed sending forward the proof in the hope of obtaining the affidavit of James I. Dozier, Esq., who informed me, and others, that some two years ago he saw the note of Stewart to Wood, for $300, in the possession of Wood, who confessed to him that it had been given for his deposition in this case; that he was familiar with the handwriting of Stewart, and that the body of the note and the signature were all in Stewart's writing. These facts, there is no doubt, Mr. Dozier will prove, whenever he is compelled to give testimony, but he has repeatedly refused, to me and my counsel, to give his affidavit. I also present the affidavit of the Hon. William F. Bullock, the Circuit Judge of this District, to satisfy the Court as to the reliance to be placed on the testimony of Thomas G. Addison.

I also present the affidavit of George Hancock, Esq., to show that Russell offered the place to him, and others, for about the same price he sold to James Southard. I understand that Mrs. Maria T. Pope will also prove the offer to her mother, the late Mrs. Preston, and hope to obtain her affidavit in a few days; if so, it will be forwarded and filed as a part hereof. The high standing and respectability of Mr. Hancock is probably known to one of your Honors, if not, it is well known to Mr. Crittenden and Judge Underwood. I had no knowledge of what Mr. Hancock would state until some time after the case was finally decided in the Court below. If the Court cannot affirm the decree upon the grounds set forth in my petition for a rehearing, I then pray that the Court will make its decision and remand my part of the case, with that of the other defendants, for further preparation and proof; without this, the Court will have acted on bought testimony, and I shall be robbed of valuable property by the basest fraud and villany, to prevent which, I pray to have all the relief which my case requires, and will ever pray, &c.

DANIEL R. SOUTHARD.

Subscribed and sworn to before me, this 14th day of February, 1852.

JOS. CLEMENTS,
J. P., J. C.

I personally know what is herein stated by Mr. Southard in his affidavit, by James I. Dozier, as made to him, are true. I know such statements were made not only to him, but repeated to me. Mr. Southard has repeatedly asked him for his affidavit, but he refused to give it except under compulsory process.

CHARLES M. THRUSTON.

Subscribed and sworn to before me, this 14th day of February, 1852.

JOS. CLEMENTS,
J. P., J. C.

JEFFERSON COUNTY,
City of Louisville.

This day Thomas G. Addison came before the undersigned, a justice of the peace for the county aforesaid, in the State of Kentucky, and made oath that he is, and has been for some time past, acquainted with said Peter Wood, now, and he believes, of the City of Louisville, being the same man whose deposition was taken by Gilbert C. Russell, in his suit late pending in the Circuit Court of the United States for the State of Kentucky, and being the same cause which, he has been informed, was decided at the present term of the Supreme Court of the United States. He is well acquainted with Joseph B. Stewart, attorney at law, and with his handwriting, said Stewart having been one of the attorneys employed in said suit by Russell, against Southard, and that said Stewart, to his certain knowledge, having superintended most, if not all, of the depositions for and in behalf of said Russell. He also states that for several years past he has acted as agent for others, in renting out houses, and procuring houses for others, and in collecting debts, &c., &c. That at the beginning of last November, the said Peter Wood came to the office (part of which he occupied) and inquired for said Stewart, and seemed very anxious to see him; he told affiant he held Stewart's note for (he verily believes) three hundred dollars, and wished to get the money, and thinking affiant would more readily find Stewart, that he would hand affiant said Stewart's note (for he is quite sure of speaking from memory) for three hundred dollars, dated some two years ago, and due, and requested this affiant to collect the same, and that he would pay him the sum of twenty-five dollars for so doing.

Knowing that Mr. Stewart was then under embarrassments, he said nothing about it to him, having only seen him once or twice, ad interim, and then he handed the note back to Dr. Wood, not being disposed to harass and trouble said Stewart about the matter.

He is certain that the said note was written and signed by said Stewart—he is familiar with his handwriting: having often seen him write, and having had various writings from time to time in his possession.

THOMAS G. ADDISON.

Subscribed and sworn to, before me, this 5th day of February, 1852.

JOSEPH CLEMENTS.
J. P., J. C.

RUSSELL
vs.
SOUTHARD, &c.
} Pending in Supreme Court, U. S., on petition for rehearing.

I am personally acquainted with Thomas G. Addison, at present residing in the City of Louisville, and believe him to be entitled to full credit upon oath. Witness my hand, this 9th day of February, 1852.

W. J. BULLOCK.

Subscribed and sworn to before me, this 9th day of February, 1852.

JOSEPH CLEMENTS.
J. P., J. C.

SOUTHARD, &c.
ads.
RUSSELL.
} Pending in Supreme Court, U. S., on a petition for rehearing.

I, George Hancock, state that some short time previous to the sale by Col. Gilbert C. Russell, of his farm near Louisville, to James Southard, he offered to sell it to me for five thousand dollars, and he made the same offer to my sister, Mrs. Preston. I thought it a speculation, and would have bought it but for the reputation the place bore for being extremely sickly. He also explained to me the reason why he had given so large a price for the place, which it is not deemed necessary here to state, and which satisfied me that he knew he was giving much more than its value, at the time he made the purchase.

GEORGE HANCOCK.

STATE OF KENTUCKY,
Jefferson County, sct.

Subscribed and sworn to before me, February 12th, 1852.

JAMES J. DOZIER,
Notary Public for Jefferson County aforesaid.

The following was endorsed on the foregoing affidavits, in the handwriting of Mr. Chief Justice Taney.

The Court direct me to say that these affidavits are not to be inserted in the report, as they implicate the character of individuals who can have no opportunity of offering testimony in their defence.

The reporter will merely state in general terms, that affidavits were filed to support the motion.

1st March, 1852.

I, William Thomas Carroll, Clerk of the Supreme Court of the United States, do hereby certify that the preceding is a true copy of the motion made in the above entitled case for a rehearing, of the opinion of the Court, as delivered by Mr. Chief Justice Taney, and of the affidavits filed in support of said motion, and of the endorsement made by Mr. Chief Justice Taney on said affidavits.

[L. S.] In testimony whereof I hereunto subscribe my name, and affix the seal of said Court at the City of Washington, this 5th day of April, A.D. 1852.

WM. THOS. CARROLL.
Clerk Supreme Court, United States.

And afterwards, to wit, on the 5th day of July, 1852, came the complainants, Daniel R. Southard and others, into the Clerk's office of the Circuit Court of the United States for the District of Kentucky, by their counsel, and filed their Bill of Review herein against Gilbert C. Russell; bond for costs with surety having been executed as required by the order of the Court of June 15th, 1852.

Bill of Review.

Bill of Review.

To the Hon. the Circuit Court of the United States, for the Kentucky District, in Chancery sitting.

Daniel R. Southard, by leave of the Court, files this his Bill, in the nature of a Bill of Review, and says: On 23d September, 1847, Gilbert C. Russell, by his bill then filed in this Court, and by amendments thereto, sought to recover from your Orator, and others under him, a tract of 216 acres of land, lying near Louisville; such proceedings were therein had that the cause came on for a final hearing, and by decree, rendered 8th June, 1849, the bill of Russell was dismissed, and he ordered to pay the defendants their costs. Afterwards, on appeal to the Supreme Court of the United States, that decree was reversed, and the cause remanded to this Court for a new decree, and further proceedings, pursuant to the opinion and mandate of that Court; and on the 1852, in obedience thereto, this Court rendered a decree in favor of Russell against your Orator; all which more fully appear by the record of said suit, which is referred to and made part hereof.

Since the rendition of said original decree, your Orator has ascertained that the suit was brought for Russell by Joseph B. Stewart, and other attorneys of this Court, under and by virtue of a champertous and illegal agreement between Russell and Stewart, whereby Stewart undertook to pay the costs of the suit and the fees of other attorneys, and Russell promised to convey to him one-half of all the land that might be recovered by the suit as a contingent fee for his services therein. Or the suit was instituted under and by virtue of some similar and equivalent illegal and champertous contract, between Russell and Stewart, or with Stewart and others; the effect of which was, Russell being then and still insolvent, to make Stewart or him and the other attorneys joint partners with Russell in the avails of the suit. The said Russell is made defendant hereto, and required to disclose on oath the terms of the agreement, written or oral, between Russell and said attorneys, or either of them, by which they undertook to bring said suit, or if not made until after it was brought, by which they agreed to prosecute the same, and to file all written evidences thereof.

In pursuance of said illegal and champertous agreement, Russell, 9th April, 1852, for the nominal consideration of one dollar, and the actual consideration of said agreement, conveyed to Stewart an undivided moiety of said tract of land. A certified copy of the deed is filed herewith as part hereof.

Your Orator is informed, from information which first came to his knowledge within the last four or five months, believes and charges that said Stewart illegally, fraudulently, and corruptly, obtained, by direct bribery, the testimony and deposition of Peter Wood, a material witness in the cause, and upon faith in whose statements the Supreme Court was induced to render its decision. He does not know precisely, what, or how much Wood did receive, or was to receive, in the event of the success of the suit, but he has ascertained that Stewart did give Wood his note for the sum of $280, or near that amount, and that he paid him $20, or other larger sum in money.

He has also reason to believe from the declarations of Wood, as reported to him by third persons, that he, Wood, in case of success, was to receive some ten, fifteen, or other number of acres of the land; in corroboration of this charge of fraud and bribery, he files several affidavits herewith.

Some time since the rendition of said original decree, your Orator learned for the first time the fact, that just before the sale of the farm to James Southard, it was offered by Russell at the price of $5000 to George Hancock, Esq., and the late Mrs. Caroline Preston; and he was urgent with each of them to buy from him at that price. This charge is sustained by the affidavit of Mr. Hancock, filed herewith; and he expects further to corroborate it by circumstances, to which, he is informed and believes, Mrs. Maria Preston Pope will testify, as to the offer made by Russell to her mother, the late Mrs. Preston.

Prior to said original decree, your Orator was not aware that he could prove, that, shortly previous to the sale to James Southard, the farm was advertised and offered for sale by Russell at auction, and not sold, for the want of bidders, though your Orator has some imperfect recollection of such having been the fact. This fact he has recently ascertained that he can now prove by Doctor U. E. Ewing, whose affidavits he files herewith. Clayton Talbott, one of the witnesses used by Russell in said suit, stated in his deposition that he offered Russell $10,000 worth of property, in Huntsville, Alabama, for the farm; and this testimony had no doubt much influence with the Court in fixing the then value of the farm. Your Orator did not know before said final decree, but has ascertained within the last few months, that the property in Huntsville, so estimated by Talbot at $10,000, within two years after the offer to Russell, was sold by him for less than $4000, upon a credit of from one to five years. This fact he can now prove by the Hon. John P. Oldham, whose affidavit is filed herewith. Your Orator did not know until within the last few months, that Doctor James C. Johnston, another material witness in the cause, could or would make any other, or different statement, as to the purport of his conversation with James Southard and Russell, than that contained in his deposition, explanatory thereof. He has now ascertained for the first time, that he will prove that the Supreme Court has entirely misconceived or misconstrued what he intended to say in his deposition, as will appear by his affidavit filed herewith.

Since the rendition of said original decree, your Orator has found, among the papers of James Southard, what purports to be a written "extract from a letter from G. C. Russell to J. W. Wing, Esq., dated Alexandria, 19th December, 1827," which is filed herewith. This extract is entirely in the handwriting of William D. Payne, who died long before the institution of this suit, and certified over his signature to be truly executed, "on the date of 16th January, 1828."

Your Orator is advised that the extract cannot be used in his favor as evidence, and he has been unable to ascertain certainly where Winn died, and who has possession of his papers. He is, however, still in hopes of procuring the original letter of Russell, and if so, he claims the right to file it and make it a part hereof.

Your Orator has seen what purports to be an unofficial extract from the schedule of estate, surrendered by Russell, under oath, when he took the benefit of the insolvent law of Alabama. One item of which is a debt against John Floyd for $8000. This in connexion with the extract from Russell's letter to Winn, induces the belief that the sale from Floyd to Russell was coupled with some sort of a contract between them, which authorized Russell to look to Floyd for whatever difference there might be between the price obtained on a resale of the farm, and that which he paid Floyd therefor. Your Orator has written to the son of said Floyd, now dead, to obtain information on this subject, but has received no answer. His former co-defendant, Samuel D. Tompkins, is now absent on a trip to Virginia, and has promised before his return to see the representatives of Floyd, and obtain the necessary information. Should it be obtained before the hearing hereof, your Orator claims the right to prove the fact.

The other defendants to the said suit, having but a minor and subsidiary interest therein, and knowing nothing about the merits of the main controversy between your Orator and Russell, left the preparation and defence of that part of the case exclusively to him and his two attorneys, Charles M. Thruston and Preston S. Loughborough. Those other defendants, therefore, as he believes, knew nothing, and could have known nothing, about the new and recently discovered facts here set forth. Mr. Loughborough died some six months ago. Mr. Thruston's affidavit is filed herewith.

In order that your Orator, his family, and his creditors, may not be so iniquitously robbed of such valuable property by the final decree herein, which has been so manifestly obtained by the fraud of said Stewart, in procuring, by subornation, the perjured testimony of said Wood, and in order that your Orator may have the benefit of the newly discovered facts and testimony herein set forth, and in order that true justice may be done between the parties, your Orator prays that said final decree may be reviewed and set aside; and that his Bill of Review, with the proof taken under it, may be heard with the original, and the proof taken thereunder. That said original bill be dismissed, and that he have all such other and further relief as he may be entitled to. Your Orator understands that William H. Pope and William C. Bullitt disclaim any interest in the cause. He makes them defendants hereto. As in duty, &c., he will ever pray, &c.

THRUSTON & NICHOLAS,
For Southard.

State of Kentucky,
Jefferson County.

This day, Daniel R. Southard came personally before the undersigned Justice of the Peace for said county, and on oath states that he believes the statements in the foregoing petition are true.

DANIEL R. SOUTHARD.

Subscribed and sworn to before me, this 18th day of May, 1852.

JOS. CLEMENTS,
J. P. J. C.

Samuel D. Tompkins, William L. Thompson, Matilda Burks, Joseph R. Tunstall, John Burks, James Burks, Samuel Burks, Charles Burks, and Mary Burks, the four last named by William L. Thompson, their next friend, do unite with Daniel R. Southard in his foregoing Bill of Review, say they know nothing of the various matters therein alleged, until since the rendition of said original decree, adopt the allegations of Southard, and pray as he has prayed, so far as may be material and necessary for the protection of their rights.

JAMES GUTHRIE, *Att.*
W. L. THOMPSON,
JOHN BURKS,
SAML. D. TOMPKINS.

Sworn to, by Wm. L. Thompson, before me, this 26th May, 1852.

J. W. EARICH,
J. P. J. C.

Sworn to, by John Burks, before me, this 26th May, 1852.

WILLIAM MINOR,
Notary Public.

Sworn to, by Samuel D. Tompkins, before me, this 11th day of June, 1852.

JOS. CLEMENTS.
J. P. J. C.

Since the foregoing bill was sworn to, I have received a letter from John Floyd, saying he knew nothing about the alleged understanding between Russell and his father.

DANIEL R. SOUTHARD.

Defendant Southard says that no demand of possession has been made by the receiver; but he is ready to deliver possession whenever applied to, and otherwise to comply with the decree in all respects.

DANIEL R. SOUTHARD.

NOTE.—The agreement between Russell and Stewart, and the affidavits of James Guthrie, Charles M. Thruston, George Hancock, and others, referred to in the foregoing bill, were read, upon the application to file the said bill, and are transcribed in this record, supra, pages 3 to 18 inclusive.

The following is the Decree rendered in the cause of Gilbert C. Russell *vs.* Daniel R. Southard and others, by the Circuit Court, in conformity with the mandate and opinion of the Supreme Court:

Russell vs. *Southard, Copy Decree.*

UNITED STATES OF AMERICA.
8th Circuit and Kentucky District (*19th May*), *May Term*, 1852.

GILBERT C. RUSSELL, Complainant,
vs.
DANIEL R. SOUTHARD and others, Defendants. } In Chancery.

This day came again the complainant by C. S. Morehead and B. Monroe, Esqrs., his Counsel, and the defendants by S. S. Nicholas, Esq., their Counsel. And,

In pursuance of the opinion and mandate of the Supreme Court of the United States, It is now declared and decreed that the conveyance from Gilbert C. Russell to James Southard, bearing date the 24th day of September, 1827, in the record contained, and in the opinion and mandate mentioned, was a mortgage, and that said Russell is entitled to redeem the same. In further pursuance of the opinion of the Supreme Court, that the case is not now in a condition for a final decree in respect to the other defendants, the cause is remanded to the rules.

It is agreed by the counsel of the parties that Samuel D. Tompkins may, on the next rule day, or the next thereafter, offer to have filed an amended answer to complainant's bill, as if now offered, so that his right to have the same filed may be objected to by complainants, and the matters decided by the Judge, as if the motion were now made in Court.

Order Filing Answer.

And afterwards, at Rules, held in the Clerk's Office, before the Clerk, on Monday, the 6th day of September, 1852, came the defendant, Gilbert C. Russell, by James Harlan and J. B. Stewart, Esqrs., his counsel, into the Clerk's office, and filed his answer herein. Which answer is as follows:

Russell's Answer.

Answer of G. C. Russell.

The answer of Gilbert C. Russell to a bill purporting to be a bill in the nature of a Bill of Review, exhibited against him in the Circuit Court of the United States for the Kentucky District, by Daniel R. Southard, &c.

This respondent, saving all manner of exceptions to the insufficiencies, errors, and misstatements, in said bill contained, begs leave to state that he is advised that the matters and things therein contained are wholly insufficient to authorize a review of the decree rendered in said suit, and improper and irrelevant matters introduced in said bill, and matters sought to be retried which were previously in issue, and solemnly adjudicated upon; for all which this respondent is advised that there is no good ground to review said decree. But, as the Court has given leave to file said bill, he feels constrained to answer in detail the matters thereof.

This respondent admits that he filed his bill in this honorable Court, claiming to redeem a tract of 216 acres of land, lying near Louisville, that said bill was dismissed on a final hearing, with costs, and that afterwards on appeal to the Supreme Court of the United States this decree was reversed, and the cause remanded to this Court for a new decree, and further proceedings, pursuant to the opinion and mandate of that Court. The proceedings had in this Court will speak for themselves; but this respondent is advised that the mandate of the Supreme Court, and the decree of this Court, in pursuance thereof, are not so far executed as to authorize the filing of this bill. Further answering, this respondent denies that said suit was brought by him, by virtue of any champertous, or illegal agreement, between him and Joseph B. Stewart, or any other person. Every charge to that effect is untrue and false. There was no agreement whereby the said Stewart, or any one else, undertook to pay the costs of the suit, and the fees of other attorneys, nor did your respondent promise to convey to him one-half of all the land that might be recovered by said suit, as a contingent fee for his services, or any part or parcel of said land. This respondent had no definite understanding with his attorneys, or either of them, when the suit was instituted. When the bill was sent to Frankfort to be filed, he wrote to the Hon. Ben. Monroe, employing him in the case, and asking him to correct the bill which had been prepared, by erasures, interlineations, amendments, &c., at the same time soliciting him to become security for costs. In that letter was added: "As regards compensation, in case of success, I expect to pay largely; if the reverse, moderately,—enough, however, on this subject; before I return home, we will come to a more definite agreement." Respondent retains still a copy of this letter, which he will file if deemed important or material. Afterwards, on the 27th day of November, 1847, a written contract was entered into, signed by respondent and Joseph B. Stewart, in which it was stated that respondent had employed said Stewart and Benjamin Monroe to prosecute said suit, and as a compensation therefor, agreed to pay them a sum of money equal to one-half of what might be recovered in said suit, and if additional counsel were employed either in the Circuit or Supreme Court, if engaged and paid by said respondent, the amount thus paid was to be deducted from the amount agreed to be paid the said Stewart and the said Monroe. This was the only contract made by respondent, and no other or different agreement was ever made, until after the Supreme Court delivered its opinion in the case. The compensation was to be altogether contingent, and this respondent was no way bound by this or any other contract or agreement, either written or oral, express or implied, to convey to said attorneys, or either of them, or to any other person, the one-half or any other part of the subject-matter of litigation; but his obligation was strictly for a sum of money to be paid on the contingency of success. Said written contract above named was delivered by him to said Stewart, and he understands has been lost or mislaid. This respondent retained the substance of the contract, and has detailed it truly. If the contract should be found hereafter, he begs leave to file it as a part of this answer. After the cause came to the Supreme Court, viz., on or about the 13th of March, 1852, this respondent being anxious to secure his attorneys, executed a mortgage of his equity of redemption and reversionary interest in said land, and according to his recollection, without having the mortgage before him, substantially adopted the terms and intentions of the written contract first above set forth. Said mortgage, he understands, was never recorded, for the want of proper attestation. He supposes that he can obtain the original, and if so he will file the same, and when filed will be marked A, No. 2.

Said Joseph B. Stewart, with the approbation of this respondent, employed the Hon. Henry Clay and C. S. Morehead, to argue said cause in the Supreme Court, for which he had agreed to pay out of the fee that might be coming to him and said Monroe, the sum of five thousand dollars, viz., twenty-five hundred to the said Henry Clay, and the same sum to the said C. S. Morehead, all dependent on success. He had also in the same manner contracted with the Hon. George Robertson, to pay him one thousand dollars for services rendered in said case, and in the same way with the Hon. James Harlan, the sum of five hundred dollars. With a knowledge of these facts, after the final trial of the cause in the Supreme Court, viz., on the 9th of April, 1852, he executed a deed to said Stewart, for one undivided moiety of said land, in which was secured and charged the sums due and payable to the other counsel, who had been engaged in said suit, including the Hon. Joseph R. Underwood, who came into the cause under an arrangement with and as the representative of Mr. Clay. This respondent was induced to do this from the precarious condition of Mr. Clay's health at that time; and who felt and expressed a great desire to have all his business closed before his death, and under a full and confident belief that the suit was finally terminated on its merits.

He denies most positively that said deed was executed in fulfilment of any previous agreement, contract, or understanding, of any character whatever, that such a deed would be made. There was no obligation on respondent to make any such deed, or to convey any portion of the land; but not doubting that he had at the time, the full legal right to do so, he executed the deed, in order to close the transaction in the way which he believed was easiest for himself, and for the additional reason that Mr. Clay desired to have it closed. This respondent is advised that the whole matter hereunto responded to, constitutes no ground whatever for reviewing the decree in question. He denies that complainant came to any knowledge of the fact of the transaction, since the rendition of the decree. The fact that respondent had agreed to pay his counsel a contingent fee, and the nature and the amount of the contingency, were matters of notoriety; and could have been established quite as well then as now. He denies that there is any new discovery by the complainant of any fact in relation to this matter existing prior to the date of the decree. He is advised that the law against champerty does not apply to a case of this kind, and he therefore insists that the matter, as set out in complainant's bill, is no ground for reviewing the decree, but irrelevant, and improperly admitted to be filed.

As to the charge that said Stewart "illegally, fraudulently, and corruptly obtained by direct bribery, the testimony of Peter Wood," this respondent says that he believes it is a most gross and vile slander. He has read with the loathing and disgust they are calculated to excite, the affidavits read on the application to file this bill, showing the appliances, and base and corrupt means resorted to by complainant Southard to procure testimony to open this decree. His stealthy visits in the darkness of the night to grog-shops, his employment of men to ply with intoxicating draughts an old man unfortunately addicted to their too free use; the drawing from him, in the hours of conviviality, loose expressions, and noting disjointed fragments of conversations, and the constant insinuation that money was no object with him; that he had five hundred dollars if he knew how to spend it, &c., &c., furnish the best commentary upon the wisdom of the law in not lending too ready an ear to testimony to impeach a witness after the case has been finally decided.

This respondent does verily believe that every word sworn to by

Dr. Wood is strictly and literally true, and he is satisfied that he can produce testimony stronger than any contained in Dr. Wood's deposition, that the transaction, which gave rise to this controversy, was but a security for money loaned, and that long after the day named in the defeasance for the redemption of the property, James Southard repeatedly acknowledged the right of your respondent to redeem the same. If there was anything improper in the procurement of the depositions of Wood, this respondent did not know it; and he does not now believe it. He, therefore, again denies that there was any perjury in said deposition, or that there was any subornation of perjury or bribery, direct or indirect. It may be, and probably is true that said Stewart gave his note to said Wood for $280; but respondent denies that it was given with a view to corrupt or suborn him. On his return to Kentucky, in the fall of 1827, respondent found that his overseer, Wing, had greatly involved him in debt, and among the list of creditors furnished him by said Wing he remembers Drs. Smith and Wood. When he brought his suit in 1847, he left with said Stewart a list of names by whom he believed that he could prove facts tending to show that this transaction was a mortgage. Among others were the names of James Breckenridge, Dr. J. C. Johnson, Dr. George W. Smith, and Dr. Peter Wood. He is informed and believes that he was fraudulently deprived of the testimony of Breckenridge until he died. He was informed by said Stewart that Drs. Smith and Wood each claimed a debt of him, and that Wood had exhibited an account against him, signed by J. W. Wing, for medical services and some borrowed money. Knowing that any account signed by Wing was correct, this respondent authorized said Stewart to execute a note for the same as his agent, and to do the same thing with Dr. Smith, after ascertaining what was really and truly due to him. He understood afterwards from said Stewart that he had executed a note to said Wood for $280, which included the amount of the account with some interest; how much this respondent does not know. This respondent knows nothing of the date of said note, except what is shown by the affidavits filed. He was not in the State of Kentucky when it was executed, or when said deposition was taken. He always supposed that it was executed by said Stewart as his agent, and he intended, whenever he could conveniently do so, to pay it. He authorized the note to be executed as evidence of an existing debt really and honestly due, but denies most positively that he ever understood, or for one moment supposed that it was to constitute a consideration for the deposition of said Wood, or had any connexion whatever with his testimony. The debt might possibly have been barred by the statute of limitations, unless prevented by this respondent's being out of the limits of the State of Kentucky; but this respondent felt under a moral obligation to pay it, as he remembered distinctly that Wing had named him as one of his creditors, and the account as presented was certified by said Wing, as respondent was informed and believed. Since the application to the Supreme Court for a rehearing of this case, this respondent has applied to said Stewart for the account of Wood certified as aforesaid, and he was informed by him that he had left it in his office in Louisville when absent on professional business in the State of Ohio, and that during his absence his office was taken possession of by another, and this among many other papers was lost or mislaid. If said account can be found, it will be filed as part of this answer. Respondent has thus given a full, fair, and candid statement of all he knows, believes, or has heard in relation to the execution of said note. He denies that the sum of $20, or any other sum, was paid to said Wood. If such was the case, he has no knowledge of it, and never heard it, and does not believe it; nor was there any understanding or agreement, express or implied, that said Wood was to have any part of said land. Every statement, intimation, or insinuation to that effect is absolutely false, as far as respondent knows or believes. Said Stewart informed this respondent that he would have given a similar obligation to Dr. Smith, but upon reference to a record of a suit of said Smith against this respondent in the Louisville Chancery Court, it appeared doubtful to him if any further sum was due to him. Respondent claims the right to file a copy of said record, if he should deem it proper or material for him to do so, and if filed, he prays that it may be considered an exhibit herein.

As a reason for not being able to pay off these debts, respondent had, in the fall of the year 1827, his gin mill, &c., and a large quantity of cotton consumed by fire. He wrote to his agent, Wing, apprising him of his misfortune, and directing him to collect the claims on Dr. Johnson and Samuel M. Brown, and pay off his debts as far as he could do so. He begs leave to exhibit this letter, which has come to his possession since the death of Wing, and which has the postmarks, dates, &c., to show that it was written at the time it purports. Said letter is marked A, No. 4.

This respondent denies that this is a matter which has recently, and since the original decree in this cause, come to the knowledge of the complainant, Southard, in such manner and under such circumstances as to authorize it to be considered a good ground for a Bill of Review.

The said Southard, in his affidavit presented to the Supreme Court of the United States for a rehearing, says that he always suspected that Peter Wood was bribed by Russell, or his attorney, Stewart, and though he suspected the bribery, he never knew until within the last few weeks that it could be proved. He does not state or show that he made any effort whatever, to prove what he always suspected. The character of Wood, it is true, was called in question, and depositions were taken to assail it on the one hand, and sustain it on the other. Doubtless the same appliances then put in requisition, as are now disclosed, would have produced pretty much the same result then. The final trial of the cause before the Supreme Court, and the opinion rendered in the case has produced a new and quickening energy in the search for testimony. This respondent is advised that the opinion of the Supreme Court did not materially depend upon the testimony of said Wood, and would have been decided the same way without his testimony. Indeed, the Court expresses grave doubts whether the false answer of the said Southard was not itself sufficient ground for the opinion given. This respondent, however, insists that said deposition was true, that it was obtained without fraud or collusion of any kind, and was wholly free from the taint of bribery, perjury, or the subornation of perjury, and every appearance to the contrary results from the statements drawn from an old man in a state of intoxication, brought about by means the most foul and corrupt. Affidavits were taken, and not deeming them strong enough, some of them were retaken before a different officer, leaving out material parts contained in the first. Respondent is advised that this was particularly the case with Daniel S. Rapelge, a nephew of said Southard. During the period of concocting and procuring these affidavits, the said Southard was indirectly holding out pecuniary inducements; and through persons purporting to be his agents, what could not be otherwise considered than bribes were freely offered.

Respondent is advised to say that this whole matter, as presented, is no ground to review this decree, and he submits to this Court whether a complainant, coming into a Court of Equity with his hands soiled by such glaring iniquity and corruption, will not be turned out as wholly unworthy of its equitable interposition.

As to the charge, "that just before the sale of the land to James Southard, it was offered by respondent at the price of $5000 to George Hancock, Esq., and the late Mrs. Preston, and that respondent was urgent with each of them to buy at that price," this respondent is constrained, with an uplifted hand, to say that it is absolutely and unconditionally untrue. He never offered it to Mr. Hancock or Mrs. Preston, or any one else, nor was he ever willing to take that price for it. He has no recollection that he ever offered it to either of them at any price. At this great length of time from the date of the alleged transaction, it is difficult to disprove a statement of this kind, but he believes that it will be in his power to show, by unerring testimony, that Mr. Hancock is laboring under a strange and extraordinary delusion. He is sure that he never was in his presence, and never saw him during the year 1827. The said Hancock did not remove to Kentucky from Virginia, as he is informed, and verily believes, until after the presidential election of 1828.

General Jessup was at his house in Virginia immediately after that election, and on the day that General Jessup left there, Hancock started with his family to Kentucky. From all he can learn, he was not in Kentucky during the year 1827. Col. Woolley married in the family in the early part of the month of Sept. 1827, and went with his wife directly to Virginia, and to Hancock's house, where he found him, and for some months before he had corresponded with him in Virginia. He certainly never offered to sell him the said tract of land for $5000, nor, as he verily believes, for any other sum, nor did he make any such offer to Mrs. Preston. Having received a debt from the General Government, of some $59,000, he remembers that Mrs. Preston sent for him when he was in Louisville, to borrow the sum of $5000, and he told her that the fund was exhausted, and it was out of his power to lend her $5000. She wished to borrow money, and never intimated a desire to purchase, nor was any offer made to sell the place to her. As to the insinuation that he gave to Floyd a very high price for the place in consequence of a promise made to him during the pendency of his claim before Congress, it is equally untrue. He had no such conversation with Mr. Hancock, or any one else, nor was it in fact true. Not one word was ever said to him about purchasing the place until after the allowance of his claim. Governor Floyd then offered to sell, and after advising with the Hon. Henry Clay and John Rowan, respondent agreed to give $60 per acre for it, they both concurring in the opinion that it was a very great bargain at that price. It was represented to respondent that the improvements cost much more than respondent was giving. He bought it at what he considered a low price for a summer residence for his family, and with the intention of permanently holding it. It is altogether untrue, that his purchase was the result of any understanding with Governor Floyd, either express or implied, dependent upon the contingency of the passage of his claim before Congress. Respondent does not for one moment doubt that he could any day have sold said farm for much more than the sum of $5000. James D. Breckenridge informed this respondent that he could sell it at $9000, but respondent was unwilling to take that sum for an absolute conveyance. Mr. Daniel R. Southard knew of this offer, and also knew that Breckenridge was well acquainted with all the material facts in this case. Breckenridge would freely have given said Southard his deposition, but he declined to take it himself, and, as this respondent believes, fraudulently prevented respondent's counsel from taking it. Respondent's counsel repeatedly tried to take said deposition, but uniformly found D. R. Southard and one of his counsel in communication with him, he being then in his last illness, but lingering for some time, and all access to him was refused to respondent's counsel and the commissioner appointed to take said deposition. So it is, he unfortunately lost the testimony of said Breckenridge, by whom he could have shown a standing offer of $9000 for the property, and that it was mortgaged to James Southard to secure the repayment of money loaned.

This whole matter, however, respondent is advised to say, was directly in issue in the proceedings on which the decree is based, and the discovery of parol testimony of the weakest grade held competent by the law is no sufficient ground for a review of the decree rendered. Respondent therefore, as far as he is permitted to do so in answer, denies that this is good ground of review.

As to the charge of offering said farm at public auction, respondent admits it to be true. He did offer it with a reserved bid of $12,000 for himself. There were no bidders, as respondent believes on account of this limit. Complainant Southard says, that he had some imperfect recollection of this offer to sell at auction. This respondent adds, that he knew all about it. He was cognisant of all the facts in relation to it; and as respondent afterwards learned, was using all his tricks and influence to prevent a sale. He denies that he has now after the case has been fully and finally decided, any right to bring forward a matter of this kind to aid in reversing the decree rendered. It is not matter discovered since the decree, is applicable to a point heretofore in issue, and is no ground either in itself or in connexion with other evidence for a review or reversal of said decree.

As to all that is said with regard to Clayton Talbott's deposition, and the explanation now attempted to be made by the affidavit of John P. Oldham, this respondent says, that he is advised that it is wholly incompetent, and ought not to be admitted as evidence in an application to review this decree. It may be that Mr. Talbott's property in Huntsville sold for less than $10,000. This respondent knew nothing of its value then, and knows nothing now. He was offered no specific property in Huntsville, but $10,000 worth of property there, which he was unwilling to take for his place. Mr. Talbott would have been willing to give that sum in money if he could have raised it, and respondent considered that he was refusing property for his farm which would have brought him $10,000. The actual value of any property he had in Huntsville was not a question between them. He offered property to be worth $10,000, and *that* respondent was unwilling to take. This was the direct matter in issue in the original suit, and it might then perhaps have been proper to have introduced the evidence of Mr. Oldham, without perceiving, however, that it would have been entitled to much weight. But surely after a final trial and decree rendered, there could be no end to litigation if such testimony as this could be made the basis of a review and reversal of a decree. This respondent, therefore, denies that this is good ground of review, and says it is altogether insufficient and ought to be stricken from the bill.

Respondent is advised to make the same reply to so much of complainant's Bill as relates to Dr. Johnston's testimony. His deposition was deliberately and carefully prepared by himself, every answer written by himself, and of course in his own language. The said Southard had full opportunity to cross-examine him or to retake his deposition, and to scrutinize it in every way before the trial. The trial was had upon this evidence, and the testimony is construed by the Court, and the attempt now is to make the witness explain as a ground for review and reversal of the decree. Respondent denies that this is good ground of review, and says that it is wholly insufficient for any such purpose, and the evidence is altogether incompetent. This respondent denies that he ever wrote a letter to J. W. Wing of the purport of the extract set out by complainant, dated, Alexandria, 19th December, 1827. He never wrote said letter to Wing, or one like it of that date or any other date, and he has some reason to believe that the whole is a long and infamously devised fabrication to be brought up some day in judgment against him. After the death of the said Wing, many of his papers and letters were delivered over to this respondent, and they were all handed to his counsel, C. S. Morehead, who is writing this answer, and each paper examined in the presence of this respondent by him, and there was no letter among said papers of the purport of the copy set out by complainant. The nearest in date is that of 3d of December, 1827, hereinbefore exhibited, and from that letter it will appear that it was his intention to go to Kentucky in January, with the view of making some arrangements to redeem his land. What possible object could Payne have in copying such a letter to Wing, and preserving it among his papers? If such a letter was written, what objection could Wing have in giving the original, if it was a matter of sufficient interest to Payne to take a copy? And if he delivered any letter to Payne to have an extract copied by him, would not Payne if it was a matter of interest to him, have got Wing to state that it was a copy? The truth is, no such letter was written, and this respondent is not without hope that it will be in his power yet to fix the base combination and forgery where it justly belongs. This respondent is informed and verily believes that it is utterly false, that this extract is a recent discovery by complainant Southard. He is informed and believes that said Southard exhibited said extract to his late attorney, P. S. Loughborough, when preparing his answer to respondent's Bill, and about the same time called on respondent's attorney Stewart, telling him of this extract, and asking him if he knew where Wing's papers could be found. Mr. Loughborough declined to make any use of said extract, on account of the scratching out one word and inserting another in said extract. The pretence then that said extract is a recent discovery is utterly false and untrue.

This respondent is informed and charges the fact that the extract itself has been fraudulently changed. It is made now to read "you may say to Southard that I shall not *repurchase* the estate," it was originally written, "*redeem* the estate," the letters *deem* are scratched out and purchase written over it so as to make *repurchase*. This the Court will see from an inspection of the paper itself. This alteration is in a different handwriting from the body of said extract. This respondent submits it to this Honorable Court how far such a paper, under all its attendant circumstances, should have any effect upon the rights of this respondent; and how far a complainant presenting a paper with a forgery on its face, and swearing that he had recently discovered it, when he had for many years held it in his possession, entitles himself to the favorable consideration of a Court of Equity.

With regard to the extract from the schedule of the estate surrendered by respondent, and when he took the benefit of the insolvent law of Alabama, respondent says, that the same identical schedule is the one relied on by said Southard in the original suit, and that this is not a newly discovered matter as falsely alleged by complainant. It has been many years since respondent has seen said schedule, never since it was originally rendered. The liability or liabilities upon which said schedule was rendered has been long since paid by this respondent. He cannot remember the items of which said schedule was composed, but one thing he knows, and can state unhesitatingly and unequivocally, that there was no agreement whatever between him and said Floyd, that the latter was in any manner to be liable to him for the difference between what he gave for said farm, and what he might obtain for it. The sale of said farm by Floyd to him was for $60 per acre, amounting to $12,960, which sum he paid him in full, and said sale was absolute and unconditional, and wholly unconnected with any agreement, direct or implied, that Floyd was to be liable for the difference between that price and what said farm might sell for, or with any other agreement than what is contained in the deed of conveyance from Floyd to him.

Respondent is informed and believes that some years before his suit was instituted, the said D. R. Southard visited Mobile, Alabama, and while there obtained this schedule, and has ever since had it in his possession. He was well aware that this transaction was a mortgage given to secure the repayment of money loaned, and obtained this schedule at that time to fortify his iniquitous claim. Yet the complainant, Southard, says, "he has seen what purported to be an official extract" from said schedule; leaving it to be inferred that he had seen it since the rendition of the original decree, and that it was newly discovered matter. Respondent denies that it is newly discovered matter, insists that it was in the possession of said Southard long before the rendition of the original decree, and was in issue in the original proceedings in this case. Respondent, therefore, *denies* that this is good ground of review and reversal, and denies that it is now a legitimate subject of reconsideration.

In conclusion, this respondent would beg leave to state that the said Southard, from the beginning of this controversy, has not hesitated to use the most foul and corrupt means to cheat and defraud your respondent out of his just rights. He believes that he is speaking by the record when he makes this charge. Knowing the justice of your respondent's claim, while the same was in the Supreme Court, viz., in the fall of 1851, acting in collusion and conspiracy with others, he directed and procured the sale of seventy acres of said land for about $3,000, worth at least $28,000, though it was then in litigation by a pending suit, and though there was other property liable for said debt. At said sale, the said Southard endeavored to prevent competition in bidding; and after said sale, when a proposition was made by Charles Ripley, Esq., to pay the debt for which the seventy acres were sold, for forty acres, the said Southard called on said Ripley, and urged him not to press his motion; that he wished the sale to stand, and that he could give said Ripley other security for the debt he held on him, by which said Ripley was induced to withdraw his motion to open the biddings. The said Southard then with his own hand wrote a request to the Court that the sale be confirmed, all of which will more fully appear by reference to the proceedings in the Louisville Chancery Court, which is filed herewith, marked B. No. 1.

Respondent is advised that said sale is void, on account of the pendency of this suit; but he submits it to the judgment of this honorable Court, if complainant Southard should not be compelled to remove every impediment of this kind before he can come into a Court of Equity and ask its equitable interposition in his behalf to review and set aside said decree. Respondent insists that the decree in his favor shall be fully executed, and all impediments, or incumbrances, or clouds thrown over the title, by said Southard, with a view to defraud your respondent, shall be removed by him before he shall be heard by the Chancellor on his application to review and reverse said decree.

He denies all fraud, and each and every allegation of complainant's bill not herein admitted, and prays that said bill be dismissed, with costs, &c., and that he have the full benefit of his decree, rendered in pursuance of the mandate of the Supreme Court, and as in duty bound, &c.

GILBERT C. RUSSELL.

Subscribed and sworn to before me, this 17th day of August, 1852.

J. W. BECK, *J. P.*

WASHINGTON CITY,
District of Columbia.

This day personally appeared before the undersigned, a Justice of the Peace, in and for the District aforesaid, Gilbert C. Russell, who subscribed the foregoing answer, and made oath that the matters and things in said answer, so far as detailed from his own knowledge, are true, and so far as detailed from the information of others he believes them to be true. Given under my hand, as Justice of the Peace as aforesaid, this 17th of August, 1852.

J. W. BECK, *J. P.*

DISTRICT OF COLUMBIA,
Washington County, to wit:

I, John A. Smith, Clerk of the Circuit Court of the District of Columbia for the County of Washington, hereby certify that Joseph W. Beck, Esq., before whom the above answer was sworn to, and who has thereto subscribed his name, was, at the time thereof, a Justice of the Peace in and for the county and district aforesaid, duly commissioned and qualified.

[L. S.] In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, this 17th day of August, 1852.

JOHN A. SMITH, *Clerk.*

The following are the exhibits referred to in the foregoing answer, viz.:

Exhibits.

NOTE.—Exhibit marked B. No. 1, viz., the record of the suit of Burks, &c., *vs.* Southard, was read in opposition upon the application to file the Bill of Review, and is transcribed in this record, page 32 to 49.

The following is the contract between Gilbert C. Russell and Benjamin Monroe and Joseph B. Stewart, referred to in foregoing answer.

Russell and Monroe and Stewart. Contract.

This agreement, made this 27th day of November, 1847, between Gilbert C. Russell of the one part, and Joseph B. Stewart and Benjamin Monroe of the other part, witnesseth: Whereas, the said Gilbert C. Russell has employed the J. B. Stewart and B. Monroe to prosecute a suit for him against Daniel R. Southard, and others, in the United States Court for the District of Kentucky (in which suit a bill is already filed on the chancery — of said Court by said Stewart and Monroe), and as compensation for their services in the management and prosecution of said suit to the final determination thereof, the said Russell hereby agrees and obligates himself to give the said Stewart and Monroe a sum equal to one-half of the value of what may be recovered of the lands, rents, and profits; and if additional counsel shall be deemed requisite to argue the case in either the District or Supreme Court, such additional counsel is to be engaged and paid by the said Stewart and Monroe, or if engaged and paid — the said Russell, the fee thus paid shall be deducted from the amount above mentioned to be paid to the said Stewart and Monroe. And if any disagreement or misunderstanding shall arise between the parties, as to the amount or value of the final decree, reference thereof is to be made to the umpirage of respectable citizens of Jefferson County, whose decision shall be final.

Signed in duplicate by Gilbert C. Russell for himself, and by Joseph B. Stewart for himself and Benjamin Monroe, the day and year above written.

GILBERT C. RUSSELL.
JOSEPH B. STEWART. [SEAL.]

The following is the deed of mortgage from Russell to Stewart, referred to in the foregoing answer, and marked "Exhibit A. No. 2."

Exhibit A. No. 2.

This Indenture, made this thirteenth day of March, eighteen hundred and fifty-one, between Gilbert C. Russell, of the City of Mobile, and State of Alabama, of the one part, and Joseph B. Stewart, of the City of Louisville, and State of Kentucky, of the other part (both being now here in the City of Washington, District of Columbia), witnesseth, That the said Russell, for, and in consideration of the sum of one dollar to him in hand paid, and for the further considerations, uses, and purposes hereinafter mentioned, sold and conveyed, and by these presents do sell and convey to the said Stewart all that tract or parcel of land lying and being in the County of Jefferson, State of Kentucky, situated on the Bardstown turnpike road, near to or adjoining the corporate limits of the City of Louisville, being the same conveyed by Governor John Floyd, of Virginia, to said Russell, by deed, bearing date —— of May, 1826, containing two hundred and sixteen acres, with all its appurtenances, including all and whatever manner of right, title, and interest, equity of redemption, remainder or reversion, legal or equitable, he, the said Russell, may now have or be entitled to, or may hereafter acquire by decree of Court, or otherwise, in or to said land, to have and to hold to him, the said

Stewart, his heirs and assigns for ever; and the said Russell, for himself and heirs, doth covenant to warrant and defend the title of the said Stewart and his assigns against the claim or claims of all persons whomsoever.

Provided, nevertheless, that whereas, there is now a contract in existence between the said Russell and Stewart to the following effect, viz., That the said Russell did, on the day of employ the said Stewart to prosecute a suit in the United States Circuit Court of Kentucky District, which is now appealed to, and pending in the U. S. Supreme Court, and as a fee for his services, and those whom he has employed to assist him, the said Stewart is to have a sum equal to one-half of the value of whatever may be recovered of land, rents, and profits, and the said Stewart is, out of this sum, to pay and satisfy all the other counsel who are employed, and have assisted in prosecuting said suit, it being distinctly understood that this agreement is conditional, and that the above sum is only due the said Stewart in the event he shall succeed in recovering the property now in controversy, which is the same land herein conveyed, which will more fully appear by reference to said suit, styled Gilbert C. Russell *vs.* Daniel R. Southard, and others, standing No. 113 on the Court docket. Now if the said Russell shall, or any person for him, pay to, or cause to be paid to the said Stewart, the sum aforesaid, upon the condition aforesaid, then this conveyance shall be null and void, otherwise remain in full force.

In testimony whereof the said Russell hath hereunto affixed his name and seal, the day and year first above written.

GILBERT C. RUSSELL. [SEAL.]

DISTRICT OF COLUMBIA,
City of Washington, ss.

Personally appeared before me, a notary public, in and for the county and district aforesaid, duly appointed and qualified, Gilbert C. Russell, who acknowledges that he signed the foregoing instrument for the uses and purposes therein mentioned. Witness my hand and notarial seal, this 13th of March, 1851.

JOSEPH T. WALKER,
[L. S.] *Notary Public.*

The following is the letter from Russell to Wing, date 3d December, 1827, and referred to in the foregoing answer, marked Exhibit A. No. 4.

Exhibit A. No. 4.

ALEXANDRIA, 3*d December*, 1827.

DEAR SIR: Yours of the 26th October, and 9th November, have both been received. I wrote you on the 21st or 22d October, in which I informed you of the burning of my mill, gin, and a large quantity of cotton, which was much greater than I had understood when writing. The actual loss was $10,000, and the damage much more, besides the mortification of having several little bills protested, which I drew on Reynolds and Byrne, under the firm belief that enough of my cotton would be in market to meet them, and ten times more. Now, instead of having 150 bales in the market, I have only sent 11 (those saved from the wreck), and I can have no more till after first proximo, which is chargeable alone to the rascality of somebody (I think some of my own negroes, who had been severely flogged); I shall have 175 or 200 bales only, and but for the fire, I would have had 300 or 350. That burnt was the best, because it was the first picking. Tell Allen, Croghan, and Tyler the cause of protest, if the drafts I gave them were presented and protested. They shall not lose. I expect to be at Louisville in January. But in the mean time, if, through Doctor Johnston and Mr. Brown, you can settle and arrange with Croghan, Allen, Duncan, and Tyler, do so, and I presume you can, viz., they, Brown and Johnston, can settle the drafts I drew, which will be discounted with them. Whatever else I owe there, settle in the same way. Take care of Frank and the sorrel mare, &c. &c. &c.

I believe I wrote you that poor Rounsby died at the mouth of Red River. I will write you again soon.

G. C. RUSSELL.

MR. WING.

Addressed—MR. J. W. WING,
Louisville, Kentucky.

Order.—Leave to retake Deposition.

And at a Court held for the circuit and district aforesaid, on Monday, the 6th day of September, 1852, came the defendant G. C. Russell, by James Harlan, and Joseph B. Stewart, Esqrs., his counsel, and on his motion, and the affidavit of Joseph B. Stewart, Esq., which is filed, leave is given the defendant to retake the deposition of A. R. Woolley, taken and read in the original cause of Russell *vs.* Southard, &c., for the purpose of showing that George Hancock, was not in Kentucky during the year 1827; and that he is mistaken, in supposing that defendant Russell, offered to sell his farm to him or to Mrs. Pope for five thousand dollars.

And also to retake the deposition of Dr. George W. Smith (heretofore taken in the original suit), in relation to the charge of bribery, in taking the deposition of Dr. Peter Wood, alleged in the bill of review and denied in respondent's answer.

The examination of both witnesses will be confined to the above matters, and not extended to anything in issue in the above cause. The depositions to be subject to all legal exceptions.

On the further motion of the defendant, the Clerk is directed to allow William S. Pilcher, the Master, to take out of the Clerk's Office, upon leaving a copy, the paper purporting to be a copy of letters written by G. C. Russell to Wing, made by Payne, in order that said paper may be seen by witnesses in giving their depositions. It will be returned to the Clerk's Office, with the depositions that may be taken.

The following is the affidavit of Stewart referred to in the foregoing order:

Defendant Russell asks leave to retake the deposition of Abraham R. Woolley, purely upon the matters set forth in such bill, to show that George Hancock was not in Kentucky during the year 1827, and that he is totally mistaken as defendant's offering to himself or Mrs. Pope his farm for $5000.

Defendant also asks leave to take the deposition of Dr. George W. Smith, to establish a fact which defendant deems important to his interests, relative to the charge of bribery, in taking the deposition of Dr. Peter Wood, which is also a matter set forth in said bill of review, and responded to by defendant. He wishes to examine as to nothing previously in issue.

JOSEPH B. STEWART.

Sworn to in open Court, by Joseph B. Stewart, September 6th, 1852.

JOHN A. MONROE,
C. C. C. K. D.

Replication.

And afterwards, at Rules, in the Clerk's Office, before the Clerk, on the 29th day of September, A. D. 1852,

Came the complainants, by S. S. Nicholas, Esq., their counsel, and for replication to the defendant's answer, say that the allegations of their bill are true, and that the allegations of defendant's answer, so far as they contradict, or deny, the statements in their said bill, are untrue, wherefore, &c.

Orders filing Interrogatories.

And afterwards, at Rules, in the Clerk's Office, before the Clerk, on Monday the 4th day of October, A.D. 1852,

Came the complainants, by their counsel, and filed interrogatories herein.

And afterwards, at Rules, in the Clerk's Office, before the Clerk, on the 2d day of November, A.D. 1852,

Came the defendant, by J. B. Stewart, Esq., his counsel, and filed cross-interrogatories herein, to the interrogatories filed by the complainant, on Monday, October 4th, 1852.

And afterwards, at Rules, in the Clerk's Office, before the Clerk, on the 22d day of November, 1852,

Came the complainants, by Nicholas, and Haggin, and Harris, their counsel, and filed interrogatories herein.

And afterwards, at Rules, in the Clerk's Office, before the Clerk, on the 11th day of January, A.D. 1853,

Came the defendant, by his counsel, and filed cross-interrogatories herein.

And afterwards, at Rules, in the Clerk's Office, before the Clerk, on the 15th day of January, A.D. 1853,

Came the defendant, by his counsel, and filed interrogatories herein.

And afterwards, at Rules, in the Clerk's Office, before the Clerk, on the 31st day of January, 1853,

Came the complainants, by their counsel, and filed at general interrogatory, to be appended to their interrogatories, filed herein, on the 4th of October, and 22d November, 1852.

And afterwards, at Rules, in the Clerk's Office, before the Judge, on the 7th day of February, 1853,

Came the complainants, by their counsel, and filed interrogatories herein, also, came the defendant, by his counsel, and filed interrogatories herein.—And

Order extending time for proof. Leave to retake Depositions.

By consent of parties, the time of taking proof, is extended until the first Monday in March next, and on motion of Southard, &c., by his counsel, they have leave to take the deposition of George W. Smith, and Mortimer D. Roberts, upon matters to which they were not examined, and did not depose to in the original cause, subject to all legal exceptions by Russell. And on motion of Russell, by his counsel, he has leave to retake the deposition of A. R. Woolley, subject to all legal exceptions, by Southards, &c.

By consent of parties, by their counsel, It is ordered that, in the absence of William S. Pilcher, the Commissioner, depositions may be taken before William A. Hanser, Esq.

And afterwards, at Rules, in the Clerk's Office, before the Clerk, on the 12th day of February, 1853,

Came the defendant, by his counsel, and filed cross-interrogatories herein.

And afterwards, at Rules, in the Clerk's Office, before the Clerk, on the 14th day of February, 1853,

Came the defendant, by his counsel, and filed cross-interrogatories herein.

And afterwards, on the 16th day of February, A.D. 1853,

Came the defendant, Russell, by his counsel, and filed interrogatories herein.

And afterwards, on the 21st day of February, A.D. 1853,

Came the defendant, Russell, by his counsel, and filed interrogatories herein.

And afterwards, before Judge Monroe, at chambers, on the 18th day of March, A.D. 1853, the following order was made.

Leave to File Interrogatories.

The defendant, Russell, has leave to file interrogatories, for the purpose of proving that Thomas Hancock was not in Kentucky in the year 1827, and on these interrogatories to examine General Thomas Jesup, and Colonel A. R. Woolley, and the complainant has leave to re-examine their witness, Thomas Hancock, in respect to the time when the proposition was made by Russell to sell the farm in Jefferson County, and the circumstances of the proposition. This may be done on the interrogatories filed, or additional ones.

This order shall not affect the right of complainants to set down and bring on the cause for hearing, unless they choose to re-examine Hancock, and in such case they may proceed to have publication, and set down the case immediately the depositions are returned.

Let the commission for defendant be returnable to the April Rules, and the depositions be published immediately received.

Complainants have until the May Rules to re-examine Hancock, if they choose.

And afterwards, at Rules, in the Clerk's Office, before the Clerk, on the 4th day of April, A.D. 1853,

Came the complainants, by S. S. Nicholas, Esq., their counsel, and filed additional interrogatories herein to take the deposition of George Hancock.

Consent to Publish.

And afterwards, at Rules, in the Clerk's Office, before the Clerk, on the 2d day of May, A.D. 1853,

Came the parties, by their counsel, and entered the following consent to publish the testimony taken in this cause, to wit:

DANIEL R. SOUTHARD and others, *vs.* GILBERT C. RUSSELL.	In Equity, on Bill of Review. United States Circuit Court, Kentucky District.

It is agreed, by consent of parties, that all the depositions taken in the above cause, not heretofore opened, shall be considered published from and after this date.

J. B. STEWART,
Of Counsel for Russell.
S. S. NICHOLAS,
For Complainants.

April 25, 1853.

3482.

Set for Hearing.

And on the same day,

On motion of the defendant, this cause is set down for hearing at the next term of this Court, to be holden in this month.

Rules—Complainants.

And on the same day,

On motion of John Joyes, It is ruled and ordered that the complainants show cause here, on the first day of the next term of this Court, why they shall not give other and counter security for costs in the place of the said John Joyes, and then to do and to perform whatever the Court may adjudge in that behalf.

And on motion of the complainant, Samuel D. Tompkins, It is ruled and ordered that the co-complainants of the said Tompkins, in the Bill of Review in this cause, show cause, on the first day of the next term of this Court, why they shall not indemnify him against any costs that may hereafter accrue in said suit, or strike his name from the bill as a co-complainant.

Exceptions to Depositions Filed.

And on the same day

Came the complainants, by Thruston and Nicholas, Esqrs., their counsel, and filed exceptions to the depositions taken by the defendant herein.

Set for Hearing.

And on their motion, this cause is set for hearing at the next term of this Court.

The exceptions filed are as follows:

Exceptions.

Complainants except to the depositions for defendant:

1. To all hearsay testimony, and move that it be suppressed and excluded.
2. To all testimony as to the character of complainant Southard.
3. To all depositions of defendant, taken upon interrogatories which have not a general interrogatory, such as is required by the rules of Court.

THRUSTON & NICHOLAS,
For Southard, &c.

NOTE.—The interrogatories and cross-interrogatories filed by the complainants and by the defendant in this cause, are transcribed hereafter, with the depositions to which they respectively belong.

Order. Motion for Rule by Security.

And afterwards, at a Court continued and held for the circuit and district aforesaid, at its May Term, A.D. 1853, and on the 16th day of May,

Came Thomas Joyes, the security for the complainants in the bond for costs herein, and also came the complainants, by W. S. Bodley. And the said Thomas Joyes, by Ben. Monroe, Esq., moved for a rule against the complainants to show cause why they shall not give counter security for costs herein, whereupon said motion was heard; but the Court, not being advised, took time.

Motion Overruled.

And on a subsequent day of said Term, to wit, on the 20th day of May, A.D. 1853,

Came Ben. Monroe, Esq., counsel for Thomas Joyes. And the Court being advised of and concerning the motion for counter security for costs herein, made at a former day of this Term, do order, and the same is hereby overruled.

Order Hearing.

And at a subsequent day of said Term, to wit, on the 23d day of May, A.D. 1853,

Came the complainants, by S. S. Nicholas and — Ballard, Esqrs., their counsel, and the defendant, by Monroe, Morehead, Harlan, and Stewart, Esqrs., his counsel. And this cause came on to be heard on Bill, Answer, Exhibit, and Proofs; but there not being time to go through with the same, time is given until to-morrow.

And on a subsequent day of said May Term, to wit, the 24th day of May,

Came again the parties, by their counsel, and this cause was further heard; but there not being time to go through with the same, time is given until to-morrow.

And on the next day of said Term, to wit, the 25th day of May, A.D. 1853,

Agreement.

Came again the parties, by their counsel, and on their motion the following agreement is filed, to wit:

"In this case, it is agreed that all exceptions to the formality of taking any deposition in the cause is waived on each side, and each party may, during the progress of the suit, except to anything contained in the depositions as incompetent evidence. And the Court may disregard any evidence deemed incompetent as if it had been excepted."

Heard and Time.

And this cause was fully heard, but the Court not being sufficiently advised took time, &c.

And afterwards, on a subsequent day of said Term, to wit, the 27th day of May, A.D. 1853, the following decree was entered herein.

Decree.

This cause, having been heard at a former day of this term, upon the Bill of Review, answer, and proofs, and the proceedings in the suit, the decree in which is sought to be reviewed by the present Bill, and the Court being now sufficiently advised, is of opinion there is no sufficient cause for setting aside said decree of the Supreme Court of the United States, entered here according to the mandate of said Supreme Court.

Wherefore, it is adjudged and decreed that the complainants' Bill of Review be and the same is hereby dismissed.

And it is further ordered, that the complainants pay to the defendant his costs in this behalf expended, and for which execution may issue.

And afterwards, on the 3d day of June, A.D. 1853, before Judge Monroe, at chambers, the following order was made herein.

Appeal Granted.

On motion of the complainants, by their counsel, S. S. Nicholas, an appeal is granted them to the Supreme Court of the United States, from the decree of this Court, dismissing their Bill, at the late session of the Court, in the present May Term, on the execution, in the Clerk's office, of an appeal bond, in the penalty of one thousand dollars, conditioned in the usual form, by Frederick G. Edwards, their surety. Given at my chambers, this 3d day of June, 1853.

THOMAS B. MONROE.
J., U. S. D. K.

The following depositions and documents were read on the trial of this cause by the complainants, to wit:

Smith vs. *Russell.*

Copy Record. George W. Smith *vs.* Gilbert C. Russell.

COMMONWEALTH OF KENTUCKY,
Louisville Chancery Court, sct.

Before the Hon. Chancellor, and sole Judge of the Louisville Chancery Court, at the court-house in Louisville on the day of

GEORGE W. SMITH, Complainant,
vs. } In Chancery.
GILBERT C. RUSSELL, Defendant.

Be it remembered that heretofore, to wit, on the 29th day of January, 1839, came the Clerk of the Jefferson Circuit Court, and filed in the Clerk's office of this Court the following transcripts of the proceedings had in said Circuit Court, to wit:

Affidavit of Matilda Burks.

SOUTHARD, &c.
vs. } Circuit Court U. S., Kentucky District.
RUSSELL.

Matilda Burks states, that she took no part in the preparation or defence of the suit in the Federal Court, of Russell *vs.* Southard, herself, and others, which was decided last winter by the Supreme Court, but left the same to the attorneys employed and her co-defendants, that she never had any personal knowledge of the matters in controversy between Russell and Southard in that suit, and prior to the decree therein, knew nothing of the new matter set up by Southard, &c., in their Bill of Review filed in this Court.

MATILDA BURKS.

Sworn to by Matilda Burks, before me, this 23d day of November, 1852.

WILLIAM MINOR,
Notary Public.

NOTE.—The foregoing affidavit of Matilda Burks, read in the hearing, was omitted in the record until after it was completed, and is now inserted on page 98.

JOHN A. MONROE,
C. C. C. K. D.

Transcript from Circuit Court.

COMMONWEALTH OF KENTUCKY.

Pleas before the Honorable John J. Marshall, sole Judge of the Jefferson Court in the Commonwealth aforesaid, at the court-house *in the court-house* in the City of Louisville, on the 10th day of December, 1838.

GEORGE W. SMITH, Complainant,
against
GILBERT C. RUSSELL, JAMES C. JOHNSTON, ELIZABETH COLLINS, and the Heirs unknown of J. W. WING, deceased, Defendants.

Be it remembered, that heretofore, to wit, on the 30th day of September, 1830, the complainant, by his counsel, filed in the Clerk's Office of the court aforesaid this Bill in Chancery against the said defendants, which is herewith sent, marked No. 1, which bill is in the words and figures following, to wit:

Bill of Complaint.

To the Honorable Henry Pirtle, Judge of the Jefferson Circuit Court, sitting in Chancery, humbly complaining, showeth your Orator, George W. Smith, unto your Honor, that on the 6th day of April, 1827, one J. W. Wing executed the note of which the following is a true copy.

"SOLDIER'S RETREAT, 6th April, 1827.

"Twelve months after date, we jointly and severally promise to pay Larz Anderson, Administrator of Rebecca C. Anderson, the just and full sum of Ninety Dollars in specie, value received," and signed his own name to the same, and at the same time signed the name of one Gilbert C. Russell to said note, and procured your Orator also to sign the said note as a security thereto. That the original of said note is now on file in a suit on the Common Law side of this Honorable Court, in a certain suit, wherein said Larz Anderson, Administrator of Richard C. Anderson, is plaintiff, and the said Russell and your Orator are defendants, a certified copy whereof will be filed herewith as part hereof, if required.

Now your Orator charges that the said note was given by the said Wing, as the agent of said Gilbert C. Russell, for hogs, cattle, and farming utensils, purchased by him of said Anderson for the exclusive use and benefit of said Russell, and were by said Wing taken to the farm of said Russell and used for the said Russell's benefit, and that said hogs, cattle, farming utensils, &c., were purchased by his agent Wing, as aforesaid, for him the said Russell; and that your Orator became the security of the said Russell in the said note at the request of said Wing, who your Orator expressly charges was the agent of said Russell. Your Orator further states and charges that the said J. W. Wing has departed this life intestate, as he is informed and believes, and utterly insolvent, and that his heirs are unknown to your Orator.

That the said Gilbert C. Russell is also insolvent, and resides out of this Commonwealth. That said Anderson has commenced suit against the said Russell and your Orator on the Common Law side of this Court, on the said note, and that your Orator will be compelled to pay the amount of said note, with interest and costs thereon, without the timely interposition of your Honor. Your Orator charges that one James C. Johnston and Elizabeth Collins, or one of them, is indebted to the said Russell in the sum of $——, more than sufficient to pay the said note, with suit and costs, as aforesaid.

In tender, &c., and for as much, &c., your Orator prays that said Gilbert C. Russell, James C. Johnston, and Elizabeth Collins, and the unknown heirs of J. W. Wing, deceased, be made defendants to this bill. That they on oath answer the allegations thereof. That said Johnston and Collins may be restrained from paying to said G. C. Russell, or to any other person for him, the sum of $90, the amount of said note, with interest thereon from the 6th of April, 1828, but that the same may be held by them, to pay whatever judgment may be obtained at law against your Orator in the suit of Larz Anderson against your Orator, &c., and that they may be decreed to pay the same out of the money in their hands due to said Russell, together with such other and further relief as to equity may appertain and your Orator may be entitled to, and your Orator, &c.

G. W. SMITH.

JEFFERSON COUNTY, to wit:

This day, George W. Smith, the complainant in the foregoing bill, made oath that the defendants, heirs of J. W. Wing, are unknown to him, and reside out of this Commonwealth, as he is informed and believes. Given under my hand this 30th day of September, 1830.

J. FERGUSON,
J. P. J. C.

JEFFERSON COUNTY, to wit:

This day George W. Smith made oath before the undersigned, a Justice of said County, that the statements of the foregoing bill are true to the best of his knowledge and belief. Given under my hand this 30th day of September, 1830.

J. FERGUSON,
J. P. J. C.

And thereupon the said clerk issued a subpœna in Chancery and restraining order, which is herewith sent, marked No. 2. Which subpœna and restraining order is in these words:

Subpœna and Injunction.

The Commonwealth of Kentucky to the Sheriff of Jefferson County, greeting: We command you to summon Gilbert C. Russell, James C. Johnston, Elizabeth Collins, and the heirs unknown of J. W. Wing, deceased, to appear before the Judge of our Circuit Court for the Jefferson Circuit, at the court-house in Louisville, on the first day of our next October term, to answer a Bill in Chancery in our said court, exhibited against them by George W. Smith. And this they shall in nowise omit, under the penalty of £100 each, and have then there this writ. Witness Worden Pope, Clerk of our said Court at the court-house aforesaid, this 30th day of September, 1830, and in the thirty-ninth year of the Commonwealth.

WORDEN POPE.

The defendants, James C. Johnston and Elizabeth Collins, will take notice, that the object of the bill in this case is to restrain them, or either of them, from paying the defendant, Gilbert C. Russell, or to any person for him, the sum of $90, with interest thereon from the 6th of April, 1827, out of any money of his in their hands, until the matters of said bill can be heard in equity.

W. D. PAYNE, *Attorney for*
GEO. W. SMITH, *Complainant.*

Sheriff's Return.

Came to hand 1st October, 1830, and executed same day on Elizabeth Collins and Gilbert C. Russell, and executed on the 2d October, 1830, on James C. Johnston; and I read to each of them the endorsement hereon of complainant. The heirs unknown of J. W. Wing, deceased, are not inhabitants of this Commonwealth, as I am and believe.

R. TYLER, *D. S. for*
C. G. DORSEY, *S. J. C.*

And afterwards, to wit, on the 11th day of October, 1830, at a Court held for the Circuit, and at the court-house aforesaid, came the defendant, Russell, by his counsel, and filed his answer to the complainant's bill herein. Also came the defendant, James C. Johnston, by his counsel, and filed his answer to the complainant's bill herein. Which answers of the defendants, Russell and Johnston, referred to in the foregoing order, is also herewith sent, marked No. 3 and 4.

The answer of G. C. Russell is in these words, to wit:

Answer of G. C. Russell.

The answer in Chancery of Gilbert C. Russell to a bill in Chancery, exhibited in the Jefferson Circuit Court, against himself and others, by George W. Smith.

This respondent, saving and reserving all exceptions, and right of exception, to the many errors and misstatements in said bill contained, for answer to so much of the same as he is advised is material for him to answer to, says. That it may be true that J. W. Wing did execute a note on the 6th day of April, 1827, in the words and figures as set forth in complainant's bill, but this respondent having never seen said note, cannot say whether he did or not. And it may also be true that said Wing did sign the name of this respondent to said note; and it may also be true that said Wing did procure or request the said complainant to sign said note as security. But this respondent positively denies that he ever did authorize, or in any manner empower the said Wing to execute or sign any note or other instrument of writing for him, or with his name to bind or oblige him to pay any debt or debts, in money or property to the said Larz Anderson, or to any other person or persons whatever, nor did he ever authorize or empower the said Wing to contract any debt or debts, or to make or execute any writing of any kind for or in the name of this respondent, to any person or persons whatever, except upon one occasion in Louisiana, long after he had left Kentucky, and then said power was in writing and for a special purpose, being about two months before said Wing's death. This respondent also denies positively that he ever did authorize or empower the said Wing, as his agent, to buy any hogs, cattle, or farming utensils, of the said Anderson for him, or to bind this respondent in any way for any such purpose, nor does this respondent know or believe that he ever did receive any benefit or profit of any kind, from any such purchase. This respondent further denies that he ever did authorize or empower the said Wing to procure or induce the complainant, or any other person to become his security for the payment of any debt or debts, or to become the security of the said Wing in any manner whatever.

This respondent also denies that the said Wing was ever authorized or recognised as his, this respondent's, agent for contracting debts, or executing any instrument of writing whatever for him, or in his name.

This respondent admits that said Wing was in his employment, for the special purpose of assisting in aiding in the removal of some negroes and other property, from the States of Virginia and Maryland, to his plantation in Louisiana, in the year 1826, and that he, this respondent, left said Wing in charge of a part of said slaves for some time in Jefferson County, Kentucky, with orders to embark and take the negroes and other to Louisiana, as soon as transportation by water could be had, which this respondent was to procure or arrange below. This respondent, in three or four weeks after, did by letter order and direct said Wing, to embark said slaves and property on board of the Steamboat Phœnix, Captain Minor Grey, which order the said Wing disobeyed, greatly to the injury and loss of this respondent. But his agency (if such it can be called), was specially confined and limited to such orders and commands as he then received, and should thereafter receive from this respondent from time to time thereafter. And this respondent further states, that he left with said Wing ample ways and means for the support and transportation of said slaves and other property to their proper destination. This respondent further admits, that said Wing did leave Kentucky and take with him a sorrel mare, the property of this respondent, to Louisiana, and that he there died, about the month of September, 1828, intestate, but whether insolvent or not this respondent does not know. This respondent admits that he resides out of this Commonwealth, and that his residence is in the State of Alabama, but he denies that he is insolvent, as alleged in the complainant's bill. This respondent also admits, that Larz Anderson, as administrator, &c., has instituted suit against the complainant and this respondent, in the Jefferson Circuit Court, as he is informed and believes. But he contends that he is nowise, either in law or equity, bound to pay said debt, or shall avail himself of any proper defence of said suit, warranted by law and the circumstances of the case, as far as respects himself. This respondent admits that James C. Johnston is indebted to him in a sum more than sufficient to pay off the demand thus unjustly set up against him. But this respondent knows of no debt due him from Mrs. Elizabeth Collins. This respondent is advised and believes, that to enable the said Wing to bind this respondent by any written instrument whatever, the said Wing should been first authorized and empowered to execute such written instrument, by a power or authority in writing, executed by this respondent, with the same or with equal form and solemnity.

This respondent again denies that he ever did so authorize him, or that he ever did empower him in any way or manner whatever, to execute any note or other writing for him, to any person or persons whatever, except as before stated. This respondent having now, as he is advised and believes, fully answered the complainant's bill, prays to be hence dismissed from said suit with his costs in this behalf expended, and as in duty bound will ever pray, &c.

G. C. RUSSELL.

R. S. WHEATLEY,
Attorney for Defendant Russell.

JEFFERSON COUNTY, *sct.*

This day personally appeared before me, the subscriber, a Justice of the Peace in and for said county, Gilbert C. Russell, who made oath that the statements and allegations contained in the foregoing answer, so far as detailed as of his own knowledge are true, and so far as detailed as being derived from the information of others he believes to be true. Given under my hand, this 6th day of October, 1830.

R. H. GRAYSON,
J. P. J. C.

The answer of James C. Johnston, is as follows, to wit:

Answer of J. C. Johnston.

The separate answer of James C. Johnston to a Bill in Chancery, exhibited in the Jefferson Circuit Court, by George W. Smith against Gilbert C. Russell, James C. Johnston, and Eliza Collins.

This respondent, saving and reserving all exceptions, &c., for answer to so much of said Bill as he is advised is material for him to answer, says, that he is not indebted to said Russell in a sum more than sufficient to pay the amount enjoined by said Smith, in a former suit, instituted by said Smith against Russell, Johnston, &c. This respondent, having no interest in the matters in controversy, and having now answered, prays to be hence dismissed with his costs herein expended, and in duty will ever pray.

J. C. JOHNSTON.

JEFFERSON COUNTY, *sct.*

This day personally appeared before me, a Justice of the Peace in and for said County, James C. Johnston, who made oath, that the statements contained in the foregoing answer is true. Given under my hand, this 11th day of October, 1830.

SAMUEL DICKENSON,
C. C. D.

And at a Circuit Court, continued and held for the Circuit, and at the court-house aforesaid, on the 12th day of October, 1830, came the defendant, Elizabeth Collins, by her counsel, and filed her answer herein, which is herewith sent, marked, No. 5.

Which answer is in these words and figures, to wit:

Answer of E. Collins.

The separate answer of Elizabeth Collins, to a Bill in Chancery, exhibited in the Jefferson Circuit Court, by George W. Smith, against

Gilbert C. Russell, James C. Johnston, and Elizabeth Collins. This respondent, saving and reserving all exceptions, &c., for answer to so much of the said Bill as she is advised is material for her to answer, says, that it is not true, as is alleged in said Bill, that she is indebted to the said Gilbert C. Russell in any sum whatever, or that she ever was indebted to him in any sum or sums of money at any time. This respondent, having no interest in the matters in controversy in this suit, and having, as she is advised and believes, fully answered, she prays hence to be dismissed, with her costs in this behalf expended, and as in duty bound will ever pray, &c.

ELIZABETH COLLINS.

R. S. WHEATLY,
Attorney for Defendants.

JEFFERSON COUNTY, *sct.*

This day personally appeared before me, a Justice of the Peace in and for said County, Elizabeth Collins, who made oath, that the statements contained in the foregoing answer is true. Given under my hand, this 11th day of October, 1830.

SAMUEL DICKENSON,
J. P. J. C.

Order Continued.

And at a Circuit Court, continued and held for the Circuit, and at the court-house aforesaid, on the 27th day of October, 1830, this cause was continued.

Order. Publication.

And at a Circuit Court, continued and held for the Circuit, and at the court-house aforesaid, on the 28th day of October, 1830, came the complainant, by his counsel, and it appearing to the satisfaction of the Court that the defendants, the unknown heirs of J. W. Wing, deceased, are non-residents of this Commonwealth, and they not having appeared and answered the complainant's Bill, It is therefore ordered, that they appear here on or before the first day of the next January Term of this Court, and answer the said complainant's Bill, otherwise, the same will be taken for confessed, as to and against them, and the matters and things therein contained, decreed accordingly. And it is further ordered, that a copy of this be published two months successively, in some public authorized newspaper of this State.

Order. Amended Bill Filed.

And at a Circuit Court, continued and held for the Circuit, and at the court-house aforesaid, on the 29th day of October, 1830, came the complainant, by his counsel, and, by leave of the Court, filed an amended Bill herein—which Bill is herewith sent, marked No. 6.

And which amended Bill, is in these words, to wit:

Amended Bill.

The amendment of George W. Smith, to his original Bill, filed in the Jefferson Circuit Court, against Gilbert C. Russell, &c. Your Orator shows, that about the year 1826, the defendant, Russell, purchased a valuable farm, lying in the immediate vicinity of Louisville, and in order to have it taken care of, and cultivated, he sent in that year the said Wing, and a number of slaves, and a small quantity of horses, who immediately, as agent and manager for Russell, took possession of the estate, where he continued to reside about two years. During this time he purchased, for the use of the farm, hogs and other stock, for which the note was given by Wing, agent for Russell, with your Orator surety, to Larz Anderson, administrator of Richard C. Anderson, deceased. Your Orator charges, that all the property purchased at Anderson's sale, for which the said note was executed, went to Russell's use and benefit; that Wing was his fully authorized agent, and attorney in fact, and that Russell was once or twice on a visit to this circuit, whilst Wing had charge of his property. That he recognised him as his agent, and authorized him fully to act for him — all cases. That he acted in obedience to his orders, in making the purchases at Anderson's sale, being principally hogs, which went to the use of Russell, though he is now fraudulently endeavoring to get clear of the obligation, and leave your Orator, though merely surety, to pay the money. Your Orator prays, &c.

JAMES D. BRECKENRIDGE, *pq.*

Order.

And at a Circuit Court, continued and held for the Circuit, and at the court-house aforesaid, on the 21st day of January, 1831, came the complainant, by his counsel, and made proof to the Court, that the order to advertise made here, at the last October Term of this Court, against the defendants, the unknown heirs of J. W. Wing, deceased, has been duly published two months successively in The Focus, a public authorized paper of this State, and also, filed a printed copy of said order, and a certificate of W. W. Worsley, printer and publisher of said paper.—Which is herewith sent, marked No. 7.

Order and Certificate of Publication.

The following is the order and certificate of publication to wit:

State of Kentucky,
Jefferson Circuit, sct.

October Term, 1830. October 28th, 1830.

George W. Smith, Complainant, *vs.* Gilbert C. Russell, and others, Defendants.	In Chancery.

This day came the complainant, by his counsel, and it appearing to the satisfaction of the Court that the defendants, the unknown heirs of J. W. Wing, deceased, are non-residents of this commonwealth, and they not having appeared and answered the said complainant's Bill, It is therefore ordered, that they appear here, on or before the first day of the next January Term of this Court, and answer the said complainant's Bill, otherwise the same will be taken for confessed, as to and against them, and the matters and things therein contained, decreed accordingly. And it is further ordered, that a copy of this order be published two months successively in some public authorized newspaper of this State.

A Copy. Teste, WORDEN POPE, *Clk.*
By EDMUND P. POPE, *D. C.*

I certify, that the order of publication issued at the October Term, 1830, of the Jefferson Circuit Court, in a suit in Chancery, wherein George W. Smith is complainant, and Gilbert C. Russell is defendant, and of which the annexed is a copy, was published in The Focus, a newspaper printed in the City of Louisville, and duly authorized by law to make such publications, for two months successively, in successive weekly publications, the first of which was on the 2d of November, 1830, and the last on the 4th of January, 1831. Given under my hand this 21st of January, 1831.

WILLIAM W. WORSLEY,
Printer of The Focus.

Printer's fee, $3 00, paid by complainant.

Order. Answer Filed.

And at a Circuit Court continued and held for the Circuit, and at the Court-House aforesaid, on the 30th day of March, 1831, came the defendant, Gilbert C. Russell, by his counsel, and filed his answer to the amended bill of the complainant herein, which is herewith sent, marked No. 8.

Which said answer is in the words and figures following, to wit:

Answer to Amended Bill.

The answer in Chancery of Gilbert C. Russell, to an amended bill filed in the Jefferson Circuit Court, against himself, and the unknown heirs of J. W. Wing. This respondent, saving and reserving all exception and rights of exceptions to the many errors and untruths in the said amended bill contained, for answer to so much of the same as he is advised is material for him to answer to, says: It is true that he did purchase a small farm in this Circuit, near Louisville, but it is untrue that he ever did send J. W. Wing with negroes and horses to cultivate said farm. The farm so purchased, this respondent intended as a summer retreat from the heat and sickness of the lower country. The negroes which he purchased and sent from the eastward, by J. W. Wing, were intended for the lower country, and Wing was ordered to stop at his farm near Louisville, there to await the arrival of this respondent, then to be immediately transported to this respondent's plantation on Red River, in Louisiana. Shortly after, say in less than three months, this respondent did take about two-thirds of them, and would have taken all, but for the illness of one man, and the situation of a girl who had recently had a child, together with a want of room in the steamboat in which this respondent embarked. This respondent left said Wing in charge of the balance of his negroes, and other property, only to await a convenient opportunity to transport them and the said property to the lower country. In a few days after, he, this respondent, wrote to said Wing, giving him positive orders to come on, with all the negroes, horses, and other property in his possession, which order was shortly after reiterated, both of which was disobeyed by said Wing, and this respondent had to come up and remove the balance of the negroes himself. This respondent denies that the said Wing was his agent, clothed with power to buy or sell, and to bind him, this respondent, by note or otherwise, but, on the contrary, states, that Wing was only employed for the special purpose of taking care of and transporting his negroes and other property to the lower country, and that the extent of his agency is fully explained in his, this respondent's, former answer, filed in this cause, which is hereby referred to, and prayed to be made a part of this answer. This respondent states that he left with said Wing ample means for the support of his negroes, &c., when he left him in charge of them. This respondent denies that he ever did, on any visit to this country, recognise Wing as a general agent, or as being clothed by him with any other or greater power than as is hereinbefore stated and set forth. This respondent says that the charge, that he ordered or directed Wing to make purchases at Anderson's sale, or any other sale, is untrue, and declares that such purchases, if made as alleged, was wholly without his authority and knowledge. This respondent knows not what property was so purchased but from report, nor does he know what became of the property so purchased. This respondent states that he was greatly injured by the said Wing's failing to comply with his orders, and respectfully contends that he can in nowise be bound or held accountable for the acts of said Wing, without the pale of the authority really given him by this respondent. This respondent denies all and every charge of fraud, or intention to defraud, set forth in said amended bill, and prays to be hence dismissed, with his costs herein expended, and as in duty bound, will ever pray, &c.

GILBERT C. RUSSELL.

R. S. WHEATLEY,
Attorney for Defendant Russell.

JEFFERSON COUNTY, *sct.*

This day personally appeared before me, a justice of the peace in and for said county, Gilbert C. Russell, who made oath that the statements contained in the foregoing answer is true, so far as the same is detailed and set forth as of his own knowlege, and so far as the same is stated as being derived from the information of others, he believes it to be true. Given under my hand this 29th day of March, 1831.

J. FERGUSON,
J. P. J. C.

Continued.

And at a Circuit Court continued and held for the Circuit, and at the Court-House aforesaid, on the 16th day of May, 1833, this cause was continued.

And at a Circuit Court continued and held for the Circuit, and at the Court-House aforesaid, on the 10th day of December, 1834, this cause was continued.

And at a Circuit Court continued and held for the Circuit, and at the Court-House aforesaid, on the 5th day of May, 1835, this cause was continued.

And at a Circuit Court continued and held for the Circuit, aforesaid, on the 17th day of November, 1835, this cause was continued.

And at a Circuit Court continued and held for the Circuit aforesaid, on the 28th day of May, 1836, this cause was continued.

Order of Removal to Louisville Chancery Court.

And at a Circuit Court continued and held for the Circuit, and at the Court-House aforesaid, on the 15th day of December, 1838, came the complainant, by his counsel, and on his motion, and the Judge of this Court, for sufficient reasons appearing, being unwilling to hear and determine the same, It is ordered that this cause be removed to the Louisville Chancery Court,—which deposition filed in this cause is herewith sent, marked No. 9.

The following is the deposition, to wit:

Deposition W. D. Payne.

The deposition of William D. Payne, of lawful age, taken at the office of James Ferguson, Esq., in Louisville, on the 22d October, 1831, to be read as evidence in a suit in Chancery, in the Jefferson Circuit Court, depending, wherein George W. Smith is complainant, and G. C. Russell, &c., are defendants. This deponent being first duly sworn, deposes and says, that he knew I. Wingate Wing, who represented himself to be the agent and attorney for said Russell. Said Wing lived upon said Russell's farm, near Louisville, and had the management thereof, as well as of said Russell's negroes and stock, as he told this deponent. He also informed this deponent that Col. Russell was in debt to said Smith for medical services rendered to the negroes of said Russell, and that he had executed to said Smith a note, as agent for said Russell, for the amount of said Smith's account, which was correct. I had transacted business with said Wing, on account of said Russell, as the agent of said Russell. Wing was transacting business for said Russell for some time in this county and city, paying his debts, and receiving money on his account.

Question by defendant's counsel.—Did you ever see a written power of attorney from Russell to Wing, authorizing him to transact his business, or to execute writings for said Russell?

Answer.—I never did see any written power of attorney from Russell to Wing. I read and had in my possession letters from Russell to Wing, authorizing him to transact a portion of his business, that is, to collect money, and to pay his debts. And further this deponent saith not.

W. D. PAYNE.

JEFFERSON COUNTY, to wit:

The foregoing deposition was taken, subscribed, and sworn to before the undersigned, a Justice of said County, at the time, place, and in the manner above stated. Given under my hand, this 22d day of October, 1831.

J. FERGUSON,
J. P. J. C.

I, Edmund P. Pope, Clerk of the Jefferson Circuit Court, in the State of Kentucky, do certify that the foregoing three pages, this one included, contains a full and true transcript of all the orders had in said case, and that the papers marked from No. 1 to No. 9 inclusive are all the papers belonging to said case. In witness whereof, I have hereto set my hand, this 16th day of January, 1839, and in the forty-seventh year of the Commonwealth.

EDMUND P. POPE.

Complainant's costs,	$7 50
E. Collins, - -	35
J. C. Johnston, -	35
G. C. Russell, -	70

Amended Bill Filed.

And afterwards, to wit, at a Chancery Court, held for the Court aforesaid, on the 12th day of February, 1839, came the complainant by his counsel, and by leave of the Court filed an amended bill, and Bill of Review herein, against the unknown heirs, executor, and administrator of Gilbert C. Russell, J. W. Wing, and James C. Johnston, and process is awarded, &c.

Which Amended Bill is as follows, to wit:

To the Hon. George M. Bibb, Judge of the Louisville Chancery Court, humbly complaining, showeth unto your Honor your Orator, George W. Smith,

That heretofore your Orator exhibited his bill on the Chancery side of the Jefferson Circuit Court, against Gilbert C. Russell, Elizabeth Collins, and the unknown heirs of J. W. Wing, and James C. Johnston, alleging and charging that J. W. Wing, as the agent of said Russell, and for the use of said Russell on his farm in Jefferson County, had purchased sundry articles and stock, at the sale of the estate of Richard C. Anderson, deceased, and that said Wing gave his note as attorney for said Russell, on which your Orator was surety. That your Orator had been compelled to pay said note, and praying that the same amount should be paid to your Orator out of the money or effects of said Russell, in the hands of Collins and Johnston. To that bill, Mrs. Collins answered, and denied that she was indebted to said Russell; and on the 11th October, 1830, the said Johnston answered, and denied that he owed to said Russell more than would satisfy another claim of your Orator against the said Russell. Now, your Orator alleges and charges that the said Russell is dead, and has no representatives in Kentucky, and the executor, or administrator, and heirs of the said Russell are unknown to your Orator.

Your Orator alleges and charges that the said *that the said* James C. Johnston, on the 11th October, 1830, by his answer to the bill of your Orator to recover the amount of his medical claim, admitted that he was indebted to Russell in a sum more than sufficient to pay that claim, and yet, on the same 11th October, 1830, the said Johnston, in this case, answered that he had *not* more money due to Russell than would satisfy your Orator's first claim aforesaid; but in what precise sum the said Johnston was indebted to the said Russell, the said Johnston has not answered. Now, your Orator is advised that under the decision of the Court of Appeals, your Orator, on his first claim, can recover no interest; but he is also advised that the said Johnston is bound to pay interest on the sum due by him to the said Russell, so that there will be in the hands of the said Johnston more than enough to satisfy your Orator's first demand. Your Orator alleges that the articles purchased by Wing aforesaid were used on the farm of Russell, and for his benefit. To the end, therefore, that the unknown heirs, executor, and administrator of said Russell and J. W. Wing, and said James C. Johnston, be made defendants to this bill, and that the same be served against the said heirs, and that the said Johnston answer and say when and how he became debtor to said Russell, and in what sum, and exhibits a statement of his account with said Gilbert C. Russell, and show what balance he owed to the said Russell; that your Honor will decree that the amount so paid by your Orator for articles purchased by said Wing, and appropriated to the use of said Russell; and that your Honor will make any other or further decree in the premises which will comport with equity. May it please, &c.,

BROWN,
Attorney for Complainant.

JEFFERSON COUNTY, *sct.*

This day, George W. Smith personally appeared before me, a Justice of the Peace in and for the County of Jefferson, and made oath that he has heard and believes that Gilbert C. Russell, named in the foregoing bill, is dead, and that the said Russell has no administrator, executor, or heirs, known to this *defendant*, in or out of the State of Kentucky, and that the administrator, executor, and heirs of J. W. Wing are unknown to this deponent,

G. W. SMITH.

Subscribed and sworn to before me, February 5, 1839.

G. J. JOHNSTON,
J. P. J. C.

Upon which Amended Bill the following process was issued, to wit:

Subpœna in Chancery.

The Commonwealth of Kentucky,
To the Marshal of the Louisville Chancery Court, greeting:

We command you to summon J. W. Wing and James C. Johnston to appear before the Chancellor, in the city of Louisville, on the 2d Monday of March next, to answer a Bill and Amended Bill in Chancery, exhibited against them by George W. Smith, and this they are cautioned not to omit, under the penalty and warning hereby given, that unless they shall appear and answer the said bill within thirty days from the day of the service hereof, the complainant may proceed against such defaulters, to file interrogatories, and take proof of the matters of the said bill, or may have an attachment to compel an answer, or at his election may take the said bill *pro confesso*, and the cause will be heard without further warning, of all which you will give notice to the defendants to take heed: and that you have then and there this writ, with your due return endorsed thereon. Teste, Albert T. Burnley, Clerk of our said Court, this 25th day of February, 1839, and in the 47th year of the Commonwealth,

A. T. BURNLEY, *Clerk.*

Upon which the marshal made the following return, to wit:

Marshal's Return.

Executed on Johnston the 1st day of March, 1839. Wing, I am informed, has departed this life.

T. M. TUNSTALL,
D. for
W. A. COCKE,
M. L. C. C.

Answer Filed.

At a Court held for the Court aforesaid, on the 2d day of July, 1839, came the defendant, James C. Johnston, by his counsel, and filed his answer to the Bill of Revivor herein.

Which answer is in these words and figures, to wit:

Answer of J. C. Johnston.

The answer in Chancery of James C. Johnston to a Bill in Chancery exhibited against him and others as a Bill of Revivor, by George W. Smith. This respondent, reserving and saving as usual, and for answer to said Bill, says, that he has heretofore filed an answer in this cause, in which he did state that he had no funds belonging to, or due to, Gilbert C. Russell in his hands, save and except the amount set forth in his answer in another suit, between the same parties. That if upon the hearing of that cause, it is decreed that he shall pay off the claim set up by the complainant in that suit, such decree and costs will considerably exceed the amount which he, this respondent, owed to Gilbert C. Russell. This respondent, therefore, refers to his answer heretofore filed herein, and prays that it may be taken and considered as a part of this answer. This respondent says, that the amount due to Gilbert C. Russell, from him, was a balance due upon a written note or obligation which he gave to said Russell, which he has not seen for years. Could he see that writing, he says he could tell exactly the amount due upon the said writing, but cannot unless he could see it.

This respondent requires the production of that writing, and that the same shall be cancelled or given up to him, upon payment of the balance due.

This respondent respectfully contends, that he cannot be justly compelled to pay interest upon the amount due to said Russell, upon said writing, inasmuch as he has ever been willing to pay the same to said Russell ever since it became due, and has retained it in his hands because of the other suit in Chancery betwixt the same parties and this suit. This respondent suggests, that the suit in Chancery ought to have been dismissed or discontinued, ever since the filing of his answer in this cause; because all the money in his hands had been attached in the other suit, and if this respondent had no property, money, or effects in his hands of, or belonging to, said Russell, there was nothing to give jurisdiction to this honorable Court. This respondent therefore prays that this suit be dismissed, and that your Honor will decree to him his costs herein expended, and as in duty bound will ever pray.

J. C. JOHNSTON.

R. S. WHEATLEY,
Attorney for Defendant.

JEFFERSON COUNTY, *sct.*

Personally came before me, a justice of the peace in and for said county, James C. Johnston, and made oath that the statements made in the foregoing answer in Chancery is true as far as detailed, as of his own knowledge, and so far as stated as from information derived from others, he believes the same to be true. Given under my hand, this 9th March, 1839.

WM. TOMPKINS,
J. P. J. C.

And afterwards, at Rules, held in the clerk's office, on the 6th day

3442.

of January, 1840, came the complainant, by his counsel, and filed interrogatories herein.

Which interrogatories are as follows, to wit:

Interrogatories.

SMITH
vs.
RUSSELL, &c.
Interrogatories on behalf of complainant, to witnesses.

1. Did the complainant, as surety for Gilbert C. Russell, the defendant, pay you any money?
2. When, and what sum?
3. How do you know that amount so paid was for, and account *of*, said Russell? State all you know about the matter in controversy.

Bill for Revivor dismissed.

At a Court held as aforesaid, on the 20th day of October, 1840, came the complainant, by his counsel, and on his motion, It is ordered that the Bill of Revivor filed herein be and the same is hereby dismissed.

Order for Jury.

And at a Court held for the Court aforesaid, on the 19th day of February, 1841, came the parties, by their counsel, and on motion of the complainant, It is ordered that the marshal of this Court cause a jury to come here on Wednesday, the 3d day of March next.

Order for Jury.

And at a Court held for the Court aforesaid, on the 2d day of March, 1841, came the complainant in the above cause, by his counsel, and on his motion, It is ordered that the marshal of this Court cause a jury to come here on Thursday next, the 4th instant, instead of Wednesday next, the 3d instant, as ordered.

Order for Jury set aside.

And at a Court held as aforesaid, on the 12th day of March, 1841, came the complainant, by his counsel, and suggested to the Court that the order entered in this cause was by mistake, there being two cases of the same parties, and the jury was ordered only in the one case, to wit: the cause numbered on the docket 1572. It is therefore ordered that the order in this case for a jury, be set aside.

COMMONWEALTH OF KENTUCKY,
Louisville Chancery Court.

I, Charles J. Clarke, clerk of the Court aforesaid, do hereby certify that the preceding twenty-four pages contain a full and complete transcript of the record and proceedings had in the cause between the parties therein named, to the period mentioned. In witness whereof, I have hereto subscribed my name, at my office, in Louisville, the 29th day of April, 1853; and in the 61st year of the Commonwealth.

CHAS. J. CLARKE.

Fee for transcript, $6.

NOTE.—The preceding record objected to by defendant, because it does not seem to be complete.

Interrogatories.

DANIEL R. SOUTHARD and others
vs.
GILBERT C. RUSSELL.
} On Bill of Review.

Interrogatories No. 1, to be propounded to witnesses on behalf of complainants:

1st. State what you know concerning a note for $280, or some such amount, from Joseph B. Stewart to Peter Wood, now or formerly held by said Wood. What is the date of the note, and how you obtained your information.

NICHOLAS & HAGGIN,
For Complainants.

Interrogatories No. 2, to be propounded to Dr. G. W. Smith on behalf of complainants:

1st. State who was the attending physician on the slaves, and overseer of defendant Russell, during the time they remained on Russell's plantation near Louisville, that he bought from Floyd and sold to Southard; that is, during the whole or part of the years 1825, 1826, and 1827?

2d. Did Peter Wood, commonly called Dr. Wood, attend as physician upon any one on that plantation whilst Russell held possession of it?

3d. Do you or do you not believe that he could have rendered service during that time to the amount of $20, without your knowing the fact or hearing of it?

4th. Was Dr. Wood during those years in a condition to lend money to any one? Do you or do you not believe that the overseer

Winn did or could have borrowed money from him to the amount of $100.

5th. Did you ever have any claim against said Russell, except what was embraced in your suit against him, and for which you ultimately obtained a decree in the Jefferson Circuit Court, Kentucky?

6th. After payment of said decree, did you ever assert any claim against said Russell, or did you, in 1847, or at any other time, tell Joseph B. Stewart, the attorney of Russell, that you had any claim beyond said decree?

7th. What would the gardener's house, and the garden on said farm, have rented for, for only one year, 1828, commencing about the first of March?

NICHOLAS & HAGGIN,
For Complainants.

Interrogatories No. 3, to be propounded to witnesses on behalf of complainants:

1st. What was a fair rent for the garden and gardener's house on Southard's farm near Louisville (bought of Russell), for only one year, commencing about the first of March, 1828?

2d. State what the late Capt. Kemp paid Philip Richardson as rent for the year, or part of the year, that he stayed there, and what were your means of knowing, or how did you get your information?

3d. Suppose that Philip Richardson said or testified that Capt. Kemp paid him $400 in cash as rent for the time he stayed there, would you believe him?

4th. Could or could not such a house, with an equal quantity of ground, as the garden, the same distance from Louisville, have been bought in 1828 for $400 in cash?

Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject-matter of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

NICHOLAS and HAGGIN & HARRIS,
For Complainants.

Cross-Interrogatories.

GILBERT C. RUSSELL
ads. } On Bill of Review.
DANIEL R. SOUTHARD and others.

Cross-interrogatories on the part of the defendant, to be propounded to witnesses examined by complainants:

Cross-interrogatory No. 1, to interrogatory No. 1 of complainants. State whether or not you have previously given an affidavit in this cause, and how many, whether one or more, and at whose instance did you give the same?

Cross-interrogatory No. 2, to same.

Please examine the copy now shown you, and say whether it is a true copy of the original affidavit given by you for defendant, and say whether it contains the truth, and whether you adopt it as a part of your deposition now given? If you please, write the initials of your name across the face of it?

Cross-interrogatory No. 3, to same.

State what first called your attention to the note mentioned. Did Dr. Wood first speak to you about it, or did you first speak to him about it? If you first spoke to him about the note, what caused you to do so?

Cross-interrogatory No. 4, to same.

Did or did not Daniel R. Southard, or some other complainant, or their counsel, and which or who of them, apply to you, and urgently request you to have an interview with Dr. Wood, the object of which interview was to obtain a sight of a note executed to him by Joseph B. Stewart, for which you were to be well compensated; and did you thereupon seek Dr. Wood, and represent to him that yourself or some one else would buy the note, or did you not cause such representations to be made to Dr. Wood, as to induce him to call at the clothing store where you stay, and offer to trade said note for clothing? Answer fully and distinctly this question.

Cross-interrogatory No. 5, to same.

Did you or not call on the son of Dr. Wood, who was then clerk in Mr. North's shoe store, and inquire of him whether his father had not such a note as the one mentioned? and what induced you to make such call and such inquiries?

Cross-interrogatory No. 6, to same.

Did you not tell Dr. Wood that your brother wished to purchase the note, that he used his money that way, and had recently purchased a note from Dr. Alexander; and did you not know that such was not the case when you stated it; that your brother did not wish to buy this note, nor had he bought any of Dr. Alexander, but had merely paid and taken up his own; and did not you design to practise by this a deception upon Dr. Wood; and did not the whole of your conversation with him about the note grow out of these inducements held out by you, that you or your brother would buy the note? State this matter in full.

Cross-interrogatory No. 7, to same.

When did Dr. R. Southard first speak to you about the note, and state what passed between you and he on this subject?

Cross-interrogatory No. 8, to same.

Do you or do you not know that D. R. Southard, some time in the spring of 1852, did enter into a collusion with E. R. Dearing,

W. J. Clark, Robert F. Baird, David F. Clark, and Daniel S. Rapalge, who agreed at his instance to act as a junto or conclave to interrogate and elicit statements from Dr. Wood, which statements were to be used to impeach his (Wood's) deposition previously given in the cause of Russell *vs.* Southard?

Cross-interrogatory No. 9, to same.

Did or did not said Dearing, D. F. and W. J. Clarke, Beard, and Rapelge, or some of them, pursuant to said agreement, at divers times entice Dr. Wood into the coffee-house of W. J. Clarke, David I. Johnston, or David F. Clark, where, after first plying him freely with strong drink, they would proceed to ask him and press him with apparently casual, but in reality, carefully studied and premeditated questions, touching the consideration of the note mentioned, and also his deposition previously given; and was it not always so arranged that some of the party who were to ask questions would sit in front of Dr. Wood, while others who were to note what he said would sit in the rear of him, so that he might not detect what was going on; and were not the whole of the interviews with said Wood conducted in this spirit?

Cross-interrogatory No. 10, to same.

Did or did not D. R. Southard promise and agree to pay those who were engaged in playing upon Dr. Wood, a handsome consideration for their service, to wit, was he not to pay E. R. Dearing five hundred dollars, or thereabouts; and did he not propose to retain Baird as counsel, upon a fee; and was not W. J. Clark to be benefitted through the agency of Dearing; and was not Southard to pay the liquor bills, for liquor drank by Wood, and those who — quizzing him; and have or not those bills been paid?

Cross-interrogatory No. 11, to same.

Did or did not D. R. Southard call frequently and consult with those who were engaged pumping Dr. Wood, and did he not approbate and sanction all that was done in the premises?

Cross-interrogatory No. 12, to same.

Did you or not give your first affidavit before James I. Dozier, Esq., and was not such affidavit so given suppressed, and another one given by you—sworn to before a different officer? If yea, state at whose request you gave the second affidavit for complainant, and who wrote the same, and whether you was present and dictated the second affidavit when it was written, or whether it was first written out and then shown you by Mr. Southard, or his counsel, and did you see the second affidavit at all, till after it was written out? And can you say, of your own knowledge, who did write it? Was the person who wrote it present at the office of the magistrate before whom it was sworn to? Did you see the second affidavit at all till after it was written out — What reason or necessity was assigned for giving the second affidavit? Why was not the first sufficient? And was not the second affidavit totally different in its tenor and meaning to the first? And did it not omit much which the first contained? Please state fully the particulars about this matter.

Cross-interrogatory No. 13, to same.

Is or is not D. S. Rapelge, who testifies in this cause, the nephew of D. R. Southard, and has he not been quite busy and active in trying to procure testimony for his uncle? Has he not also tried to prevent persons from giving their affidavits, and testifying on behalf of Russell? Has he not held out inducements to yourself and others not to testify?

Cross-interrogatory No. 14, to same.

Was or was not E. R. Dearing D. R. Southard's main manager, in getting up these statements from Wood, and did he not take Dearing's affidavit, before James I. Dozier, as to what Wood should have said? Has not Southard, since his application for review, been seen in repeated interviews with said Dearing, and has he not since then, in your presence, assured him that he depended upon him and Baird to take him through; and have you not since then heard him invoke Dearing—"for God sake not to desert him?" Please state all you know and have observed in this way.

Cross-interrogatory No. 15, to same.

Please examine the affidavit now shown to you, and say whether it contains a true representation of what you should have said concerning the matters to which it relates.

Cross-interrogatory No. 16, to same.

Please examine the two affidavits now shown you, and say whether they are the same, in meaning and purport and language, to the one made by the same parties before you. Are not all statements favorable to Russell omitted in the latter affidavit given? And say if you know whose handwriting they are in.

Cross-interrogatory No. 16, to same.

State if any effort was made at any time to bias your mind, either one way or the other, in the matter between Russell and Southard, and if so, by whom? If any such attempt was made, please state fully all about it.

Cross-interrogatory No. 17, to same.

How long has E. R. Dearing resided in Louisville, and how long has D. R. Southard resided there, and have they not been long intimately acquainted? Have you not repeatedly seen them together? In point of character, which do you think the better, or more honest and truthful now?

Cross-interrogatory No. 18, to same.

Did you not call at North and Small's shoe store, in Louisville, to see Dr. Wood's son about the note given said Wood by Stewart, and did you not also call at the store of Owen and Wood, to ascertain whether or not he had such a note? What prompted you to make that call?

Cross-interrogatory No. 19, to same.

Has not D. R. Southard claimed you as his counsel since you gave your affidavit?

Cross-interrogatory No. 20, to same.

Did you not, in all the conversations you had with Wood, try to obtain from him the admissions, by direct and pressed interrogatories, whether or not the note was given for his deposition? And whether James Southard had not a good title to the land? And did he not, in every instance, respond that the note was given him for a debt long justly due him from Col. Russell, and that James Southard had none but a mortgage title to the land?

MOREHEAD, MONROE, & STEWART.

A Copy. Attest,

JNO. A. MONROE,
C. C. C. K. D.

D. F. Clark's Deposition.

Deposition of David F. Clark.

The deposition of David F. Clark, taken to be read on the part of Daniel R. Southard, and others, against Gilbert C. Russell, on Bill of Review now pending in the Circuit Court of the United States for the 8th Circuit and District of Kentucky, by authority of the annexed commission on the interrogatories thereto annexed, and herein described, on the 15th of February, 1853, at the office of William S. Pilcher, in the City of Louisville, in the State of Kentucky. The deponent, being of lawful age, and personally known to the undersigned, and solemnly sworn and cautioned to state the whole truth, and to make true and perfect answers to the several interrogatories propounded to him, and having been duly examined by the undersigned, doth depose and say in answer to

Interrogatory No. 1.—State what you know concerning a note for $280, or some such amount, from Joseph B. Stewart to Peter Wood, now or formerly held by said Wood. What is the date of the note? and how you obtained your information.

Answer.—The first I knew anything about said note, Mr. Wood came into my store and wanted to get some goods; after he had looked at coats, he offered to trade me a note. He said that he could not get to see Mr. Stewart; that Mr. S. had promised to pay him some money on it, and if he could not get to see him, then he (Wood) would be glad to trade the note to me. I then asked him what was the amount of the note. I thought it was small. He said it was $280, and interest on it amounting to forty or fifty dollars, and he would take the face of the note for it. I told him that the goods in the store did not belong to me; that Messrs. Stone & Hart did business of that kind if done at all; that doing business for them, I had no authority to trade for paper. Mr. Wood told me that the note was in the next door at his (Wood's) son's. I went to see it, and did see it. It was a note from Joseph B. Stewart to Peter Wood, dated about the 17th or 18th April, 1849. Wood's son showed me the note, and he made a calculation of interest upon it, and said the interest was somewhere in the neighborhood of $40. I think the note was dated the 18th April, 1849.

Interrogatory No. 2.—Do you know, or can you set forth any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them? or that may be material to the subject-matter of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer.—I am not aware that I know anything of advantage to either party, and did not know that what I have said was so. As to the circumstances of Peter Wood, at the suggestion of Southard's attorney I say, that they are, and for several years have been, quite bad. I have known him for many years. He use to be my family physician, and also the physician of my father's family. After declining to buy said note, at the instance of Russell's counsel, I state that I called to look at it, because Wood said to me, if I would sell the note for him, he would buy the clothing of me.

Cross-Interrogatories.

Interrogatory No. 1.—State whether or not you have previously given an affidavit in this cause, and how many? Whether one or more? and at whose instance did you give the same?

Answer.—I think I have given two affidavits heretofore, I think in this cause, (*i. e.*), I was sworn twice; I think at the instance of Daniel R. Southard.

No. 2, cross-interrogatory, waived by Russell's counsel as to this witness.

Interrogatory No. 3.—State what first called your attention to the note mentioned. Did Dr. Wood first speak to you about it, or did you first speak to him about it? If you first spoke to him about the note, what caused you to do so?

Answer.—As I have explained in my examination in chief herein, Dr. Wood first spoke to me about the note, and my attention was called to it by him in the manner therein stated.

Interrogatory No. 4.—Did or did not Daniel R. Southard or some other complainant (in this cause), or their counsel, and which, or who of them, apply to you, and urgently request you to have an interview with Dr. Wood, the object of which interview was to obtain the sight of the *said* note, executed to him by Joseph B. Stewart, for which you were to be well compensated? And did you not thereupon see Dr. Wood, and represent to him that yourself or some one else would buy the note, or did you not cause such representations to be made to Dr. Wood as to induce him to call at the clothing store, where you stay, and offer to trade said note for clothing? Answer fully and distinctly this question.

Answer.—No such application, as suggested in the question, was ever made to me by any one, for compensation or otherwise. Before Dr. Wood came to the store at which I live and offered to trade the note as before stated, I knew nothing of his having any such note; and I say that neither by myself, or any other person, did I, in any way, induce or invite him to come to the store to trade said note for goods.

After Dr. Wood had called at the store, offered to trade the note for goods, and I had seen said note, as stated in my examination in chief herein, Mr. Daniel R. Southard called on me, and asked me if I knew anything of, or had seen a note on Joseph B. Stewart to Dr. Wood. I stated to him then that I had seen the note, and that he, Wood, had offered it to me for sale; and then Southard asked me if I knew where said note then was. I told him I did not know where it was; that I had seen it in at Wood's son's, and could not tell him anything further. Southard said that he had been trying to see that note, to get it bought up by my brother and others. He asked me then if I could get the note from young Mr. Wood, so that he could get a copy of it. I told him that I had no money to buy paper, and that I would not meddle myself about it. Once or twice afterwards Mr. Southard asked me if I knew whether Mr. Wood had sold the note; to which I replied that I knew nothing, except that I saw Mr. Wood had some new clothing. I can't say exactly as to the month when Dr. Wood called to dispose of the note to me; but it was very shortly after young Mr. Wood moved from North and Smalls, and opened store close by me. It was about a week or ten days after I first saw the note that Southard called on me as above stated.

Interrogatory No. 5.—Did you or not call on Dr. Wood's son, who was then a clerk in Mr. North's shoe store, and inquire of him whether his father had not such a note as the one mentioned? And what induced you to make such call and such inquiries?

Answer.—I did call on Dr. Wood's son to see said note; but I cannot say whether he was then clerk for North or was in the house above the corner of Third Street; I know he was in a shoe store.

The reason I called on Dr. Wood's son was, that Dr. Wood had called as above stated, and offered to sell me the note; told me that the note was at his son's, and requested me to call in there and see the note, and if I could sell the note, that he would assign it, and then come back and get the clothes; that he had been trying; that he wanted part of it in money; that he wanted to go on to Texas to see his son; that he had business there, and then would go on to Mexico; that he could make more money there than he could here. I then told him to call on my brother; that he had some money; was buying up paper, and might buy the note. He said he had tried a good many to buy the note, that they had not the money, and I think he said he had tried my brother, who declined, saying that he was about to enlarge his business, and had no money to spare to buy said note. I said to him that I would try to sell said note for him, and if I saw a chance to do so, I would let him know. I never conversed with him afterwards about it, though I saw him frequently at night at my coffee-house on Preston Street, between Jefferson and Green Streets, though he never mentioned it to me, nor I to him. My brother told me that he had money, some $300 or $400, that he could make use of, though I don't know whether he was gassing or not. He afterwards bought his partners out.

Interrogatory No. 6.—Did you not tell Dr. Wood, that your brother wished to purchase the note, that he used his money that way, and had recently purchased a note from Doctor Alexander; and did you not know that such was not the case when you stated it; that your brother did not wish to buy this note, nor had he bought any of Dr. Alexander, but had merely paid and taken up his own; and did you not design by this, to practice a deception upon Doctor Wood? And did not the whole of your conversations with him about the note, grow out of these inducements held out by you, that you or your brother, would buy the note? State this matter in full?

Answer.—I did not tell Doctor Wood, that my brother wished to purchase said note, and that he used his money that way; I did not tell him that my brother had recently purchased a note from Doctor Alexander. I am sure I never said anything about purchase, or taking up a note by my brother from the hands of Doctor Alexander. To the best of my recollection, Doctor Alexander's name was not mentioned. I recollect that I told Doctor Wood, that my brother had some money, and probably might buy it. I knew that Doctor Alexander had a small note on my brother, but I don't recollect of having said anything about it. I did not know anything about his business, until afterwards, when Southard called to get to see this note, or to get a copy of as aforesaid. The conversations of Wood to me, did not grow out of the inducements held out by me, that I or my brother would buy said note.

Interrogatory No. 7.—When did Daniel R. Southard first speak to you about the note? And state what passed between you and him, on this subject?

Answer.—As I stated before, D. R. Southard spoke to me about the note, a short time after Doctor Wood had come into the store, where I was, and offered to sell the note to me. What I stated before herein, is what passed between me and said Southard, on the subject of said note.

Interrogatory No. 8.—Do you, or do you not know, that D. R. Southard, some time in the spring of 1852, did enter into a collusion with E. R. Dearing, W. J. Clark, R. F. Baird, David F. Clark, and Daniel S. Rapalge, who agreed, at his instance, to act as a junto or conclave, to interrogate and elicit statements from Doctor Wood, which statements were to be used, to impeach his (Wood's) deposition, previously given in the cause of Russell *vs.* Southard and others?

Answer.—I know nothing about such junto or conclave, or its object, and was no party or member to or of such a combination. On the contrary, so far from my being party to any attempt to discredit Doctor Wood's testimony, I gave my deposition in the original case of Russell *vs.* Southard and others, in which I stated, that I believed Doctor Wood to be a gentleman, and as far as I knew him, I would believe him under oath. I refer to my deposition then for what I said. I say now, that I have not seen, or known much of Doctor Wood, for the last ten years. I further state, that I *never* heard of such a junto or conclave, for such purpose, or any other formed (*for such purpose*) at the instance of D. R. Southard, or of any other *purpose.*

Interrogatory No. 9.—Did or did not said Dearing, D. F. and W. J. Clark, Baird, and Rapalge, or some of them, pursuant to said agreement, at divers times entice Doctor Wood into the coffee-house of W. J. Clark, David J. Johnson, or David F. Clark, where, after first plying him freely with strong drink, they would proceed to ask him, and press him with apparently casual, but in reality, carefully studied and premeditated questions, touching the consideration of the note mentioned, and also his deposition previously given; and was it not always so arranged, that some of the party who were to ask questions, would set in front of Doctor Wood, while others who were to note what he said, would set in the rear of him, so that he might not detect what was going on; and were not the whole of the interviews with said Wood, conducted in this spirit?

Answer.—I don't know anything of the subject-matter of this question. I never saw Doctor Wood with either of the persons named, in my coffee-house, or in any other, at the same time in company with each other. And I state, that I never asked Dr. Wood into my coffee-house, or any other coffee-house in my life.

Interrogatory No. 10.—Did or did not D. R. Southard promise and agree to pay those who were engaged in playing upon Doctor Wood, a handsome compensation for their services, to wit: Was he not to pay E. R. Dearing $500, or thereabouts; and did he not propose to retain Baird as counsel upon a fee; and was not W. J. Clark to be benefitted through the agency of Dearing; and was not Southard to pay the liquor bills, for liquors drank by Wood, and those who (were engaged) quizzing him; and have or not those bills been paid?

Answer.—I know nothing about the subject-matter of the foregoing question, or of any of its branches.

Cross Interrogatories, Nos. 11, 12, 13, 14, 15, 16, 16, 17, and 18, 19, 20, waived by Russell's counsel to this witness. And further, saith not.

D. F. CLARK.

Deposition of Fountain North.

Also, the deposition of Fountain North, taken at the same time and place, to be read on the same behalf, in the same suit.

Deponent being of lawful, personally known to the undersigned, and being duly cautioned and sworn to tell the whole truth, and to make true and perfect answers to the foregoing Interrogatories, deposeth and sayeth in answer to

Interrogatory No. 1.—He says, Alvin Wood, the son of Peter Wood, has been with me, in my shoe and clothing store, at different times, for four or five years past. Sometimes during the summer, of 1851, he showed me a note for $280, in favor of his father, drawn by Joseph B. Stewart. I think the date of it, to the best of my recollection, was the 18th April, 1849. I saw the note twice. The first time I saw the note, the young man was living with me. The last time I saw it was since he left me, and went into business for himself. The first time I saw the note, the young man had it in his hand, in the store, looking at it, and called my attention to, by saying, there was a note he would like to have the money for, or some such remark as that. The second time I saw the note, was, I think in February, 1852; a man called at my store, a man I did not know, and whom I never saw before, and inquired for young Mr. Wood; I said, that he had left my employment, and I stepped to the door, and pointed out to him, the store-house, in which young Wood did business; I would have gone with him myself, but had no one in my store but myself. The stranger inquired of me, the date of the note, which I was not able to tell him, not having noticed it particularly, when I first saw it. I thought the man came to buy the note, at least I took up that idea, supposing this to have been his object. In a short time afterwards, perhaps the same day, I saw young Wood, and asked him if a man had called to see him, to buy said note; he replied, that he had not seen the man I described. I said to him, that the man particularly seemed to desire, to find out the date of the note. Young Wood, then handed the note to me, and I then particularly observed the date of the note myself. I took up the idea that he wanted to buy the note, as he manifested considerable interest in it.

3498.

Answer to Interrogatory No. 2, styled General Interrogatory.

That is about all I know about it that I remember. At the suggestion of Russell's counsel, I state that young Wood made no concealment of the note, he was desirous to sell it, and as he was going into business without capital, I thought if he could sell the note it would be of great service to him in his business. He is a straitforward young man as any I ever saw in my life.

All the cross-interrogatories waived by J. B. Stewart (Russell's counsel), and the witness saying nothing further, signs this deposition as it is.

FOUNTAIN NORTH.

G. W. Smith's Deposition.

Deposition of George W. Smith.

Also the deposition of Dr. George W. Smith, taken at the same place on the 16th February, 1853, to be read in the same suit in the same behalf. Witness of lawful age, personally known to the undersigned, and first duly sworn, doth depose and say in answer to the interrogatories propounded to him, attached to the annexed commission.

Interrogatory No. 1, for Dr. George W. Smith.—State who was the attending physician on the slaves and overseer of the defendant Russell, during the time they remained on Russell's plantation near Louisville, which he bought from Floyd and sold to Southard (i. e.), during the whole or part of the years 1825, 1826 and 1827?

Answer.—I was. Dr. Rogers or Pendergrast was called in consultation with me once.

Interrogatory No. 2.—Did Peter Wood, commonly called Dr. Wood, attend as a physician on any one on that plantation whilst Russell held possession of it?

Answer.—I do not know that he ever attended any sick person on that plantation, during the time that I attended there. I never saw him there, and I never heard of his being there that I remember.

Interrogatory No. 3.—Do you or do you not believe that he could have rendered service during that time to the amount of $\$20\frac{00}{100}$, without your knowing the fact or hearing of it?

Answer.—It is possible that he might have done it, but I never heard of it, and I don't believe he did do it.

Interrogatory No. 4.—Was Doctor Wood in those years in a condition to lend money to any one? Do you, or do you not believe that the overseer Winn did, or could have borrowed money from him to the amount of $\$100\frac{00}{100}$?

Answer.—I should hardly think he was. He was pretty dependent generally speaking, he was always hard run. I think that Winn could not have borrowed money of Dr. Wood to the amount of $\$100\frac{00}{100}$

Interrogatory No. 5.—Did you ever have any claim against said Russell, except what was embraced in your suit against him, and for which you ultimately obtained a decree in the Jefferson Circuit Court, Kentucky?

Answer.—Yes I had another claim, the suit was for medical services alone. The other claim was a securetyship for Winn the overseer, for sheep and other things purchased at Col. Anderson's sale. There were two notes, the amount I don't remember. I paid them after I brought suit on the medical bill. The amount of the notes has never been paid to me.

Interrogatory No. 6.—After payment of said decree, did you ever assert any claim against said Russell, or did you in 1847, or at any other time, tell Joseph B. Stewart, the attorney of Russell, that you had any claim beyond the said decree?

Answer.—I never asserted any claim against Russell beyond said decree, because I saw no chance of getting it, until I mentioned it to Stewart. I had spoken of it several times, but never instituted legal proceedings to recover it.

Interrogatory No. 7.—What would the gardener's house and garden on said farm, have rented for, for only one year, 1828, commencing about the first of March?

Answer.—I have no idea now what they would have rented for at that time.

Interrogatory No. 8.—Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject-matter of this, your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer?

Answer.—At the suggestion of Russell's counsel, I further, that I named my claim against Russell for the Anderson debt, at the time Mr. Stewart applied to me for my deposition in the case of Russell *vs.* Southard and others. I then, I think, named it to said Stewart. At the instance of Southard's counsel, I add that I lived in Louisville during the whole time that Russell occupied said farm, and further saith not.

G. W. SMITH.

J. B. Stewart for Russell excepts to the examination of the witness G. W. Smith, for reasons he will state to the Court on the hearing.

W. S. PILCHER.
Commissioner.

George W. Smith the above named, moved the commissioner, this day February 19th, 1853, for leave to correct his deposition, the counsel for both parties present and consenting, and the motion was granted. Whereupon he states, that since giving his deposition herein, he has ascertained that a suit in Chancery, in his name against said Russell in 1828, and that in that suit he did assert his claim for the Anderson debt, but no decree has been given for that claim, as far as I know. And further saith not.

G. W. SMITH.

G. S. Jones's Deposition.

Also the deposition of Gabriel S. Jones, taken at the same place on the 21st day of April, 1853, to be used on the same behalf in the same suit, and the same commission and interrogatories hereto attached, and herein described. Deponent being of lawful age, personally known to the undersigned, and solemnly cautioned and sworn to speak the truth, and true and perfect answers to such questions as propounded to, doth depose and say as follows, to Interrogatory No. 1, in series No. 3.

Interrogatory No. 1.—What was a fair rent for the garden and gardener's house, on Southard's farm near Louisville (bought of Russell), for one year, commencing the first of March, 1828?

Answer.—I suppose that the garden and gardener's house is the same that was once occupied by Captain Ambrose Camp. I don't know of any other house there but that. I should say, at the time mentioned in the question, $75 or $80 would have been a fair rent, per annum, for these premises.

Interrogatory No. 2.—State what the late Captain Camp paid Philip Richardson, as rent for the year, or part of the year that he (Camp) stayed there, and what were your means of knowing, or how did you get your information?

Answer.—I state that Captain Camp was my father-in-law, and I don't know *personally* what Capt. Camp paid for rent to Richardson; I got my information from Capt. Camp, but what he told me is objected to as hearsay, and therefore I do not state it.

Interrogatory No. 3.—Suppose that Philip Richardson said, or testified, that Capt. Camp paid him $400 in cash, as rent for the time he stayed there, would you believe him?

Answer.—If Philip Richardson has said, that he, Capt. Camp, paid him $400 for the rent of the place, while he (Camp) stayed there, I would not believe him, and if he has sworn it, or would swear it, I would not believe his oath. ("If he would swear it every hour in the day, from now until his death, I would not believe him.") These last words being spoken by the witness in conversation with J. B.

Stewart, Esq., at the instance of the latter, the Commissioner has written down the words.

Interrogatory No. 4.—Could, or could not, such a house with an equal quantity of ground as the garden, the same distance from Louisville, have been bought in 1828 for $400 in cash.

Answer.—I can't answer this question, as I do not know the quantity of ground Capt. Camp cultivated as a garden. Capt. Camp had but one very old negro man to attend to the garden. The garden was a small place.

Interrogatory No. 5.—General Interrogatory, heretofore written.

I know nothing further material except, as suggested by Russell's counsel, I answer, that—never knew of the existence of a receipt to Camp for the rent spoken of above, until about a month ago, I heard of it from Thomas Camp. I have never seen the receipt. Before this, Judge Nicholas, knowing that I was son-in-law to Captain Camp, spoke to me about the value of the rent of the place. I told him that I thought it was about $50 or $75. It was after this, and in consequence of it, that I spoke to Thomas Camp about it. He expressed his concurrence in the value of the rent at $75, or thereabouts. Afterwards, I saw him, and learned from him that Mrs. Camp, the widow of Capt. Camp, had found a receipt for the rent at $75. At the suggestion of same, I say that there is no hostility between Richardson and myself, but friendly intercourse. I don't intend to say that Philip Richardson swore falsely knowingly, I think he was under some mistake about it, and I would not state that I would not believe him under oath; but I am so well satisfied that his statement of $400 rent paid by Capt. Camp is a mistake, that I say I disbelieve the statement, although Richardson has, or should, swear to it. And further sayeth not.

GAB. S. JONES.

UNITED STATES OF AMERICA.
8th Circuit, Kentucky District, sct.

I, William S. Pilcher, Commissioner of affidavits, &c., hereby certify, that the foregoing depositions of David F. Clark, Fountain North, Dr. George W. Smith, and Gabriel S. Jones, were taken by me, at the times, and at the place mentioned in the caption of each of said depositions, under the power, and on the interrogatories therein named, and on the behalf and for the purposes therein set forth. That each of said depositions was reduced to writing by me, in the presence of the said witnesses respectively, and read over by me to each of them, and that each of them solemnly swore to his respective deposition before me, and signed the same in my presence. That I am not of kin, or of counsel for either of the parties to this suit, and not in any way interested in the controversy between them.

Given under my hand, at my office in the City of Louisville, this 22d day of February, 1853.

WILLIAM S. PILCHER,
Commissioner of Affidavits, &c.

W. W. Lawes's Deposition.

Deposition of W. W. Lawes.

Also the deposition of W. W. Lawes, taken on the 4th day of March, 1853, before W. A. Hauser, Commissioner, pro tem., at the office of Pilcher and Hauser in the City of Louisville, Kentucky, to be used as evidence on the part of D. R. Southard and others, in the suit of said Southard and others against Gilbert C. Russell, on a Bill of Review now pending in the United States Circuit Court, for the District of Kentucky. The deponent being of lawful age, personally known to me, duly cautioned, and first solemnly sworn the truth to speak, in answer to such questions as shall be put to him, deposes and says, in answer to the questions put to G. W. Smith and others, and in answer.

Interrogatory No. 1.

Answers—I know nothing.

Interrogatory No. 2.

Answer.—I know nothing.

Interrogatory No. 3.

Answer.—Dr. Wood might have done it.

Interrogatory No. 4.

Answer.—I do not think that Dr. Wood, during that time, was in a condition to lend any money. I know that he was very poor. I have known him for thirty years, and he has been poor all that time, and I believe he was never in a condition to lend money during that time.

Interrogatories, 5, 6, 7, waived.

Interrogatory No. 8.

Answer.—I know nothing further material, which I am instructed I can answer under these interrogatories, unless it be as to Dr. Wood's credibility on oath, and as to this, I am told by the commissioner, I can say nothing under these interrogatories.

W. W. LAWES.

UNITED STATES OF AMERICA.
8th Circuit, Kentucky District, City of Louisville.

I, William A. Hauser, Commissioner, pro tem., appointed by order of the above Court, in and for the said Circuit and District, residing in the City of Louisville, certify, that the above named W. W. Lawes was by me duly sworn, cautioned and examined, and thereupon at the time and place stated in the caption, did depose and give the above answers, and no more, to the several interrogatories so propounded to him, and the testimony so given by the witness, was by me reduced to writing in his presence, and in my presence subscribed by him. And I further certify, that I am neither of kin or counsel to, or for either of the parties to this suit, or in any manner interested in the matter, or in the event thereof.

Given under my hand, at the time and place mentioned in the caption.

WM. A. HAUSER.

Interrogatories.

Interrogatories.

Circuit Court of the United States in and for the District of Kentucky, *sct.*

DANIEL R. SOUTHARD and others, Complainants,
against
GILBERT C. RUSSELL, Defendant.
In Equity.

Interrogatories for witnesses to be examined on behalf of complainants:

1st. Are you acquainted with the general character for veracity of Elias R. Dearing, of Louisville? If so, state what that character is.

2d. From your knowledge of the character of Elias R. Dearing for veracity, do you think him entitled to credit on oath?

3d. State if you know what was the pecuniary condition, or condition as to property, of Peter Wood, commonly called Doctor Wood, of Jefferson County, Kentucky, who testified in the suit of G. C. Russell *vs.* D. R. Southard, &c., in this Court, between the years 1824 and 1830?

4th. Was said Wood in affluent or indigent circumstances?

5th. Could he have had one or two hundred dollars to loan between those periods?

6th. Was he physician for, or did he attend, the servants or family of Russell on his farm near Louisville, within said time, as a physician to amount of $100 or $200?

7th. State where Wood lived between those dates.

8th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

NICHOLAS, HAGGIN & HARRIS,
For Complainants.

Cross-interrogatories on the part of Gilbert C. Russell to the interrogatories filed by Daniel R. Southard and others:

Cross-interrogatory No. 1, to No. 1.

From what source of information have you derived your knowledge about Elias R. Dearing or his reputation for truth and veracity? Is it from personal knowledge or report? If from report, who informed you, and when?

Cross-interrogatory No. 2, to same.

Has not Elias R. Dearing lived in Louisville for many years, and has he not been personally known to D. R. Southard during the whole of that time; and has not Mr. Southard had equally as good a chance to know his reputation for truth and veracity as you have; has he not known him as long and as well as you have, and could he well be ignorant of anything pertaining to Dearing public reputation?

Cross-interrogatory No. 1, to interrogatory No. 2.

Why would you be disposed to doubt Mr. Dearing's oath? Have you ever heard him accused of perjury or false swearing? If so, by whom and when?

Cross-interrogatory No. 2, to same.

Which stands the best in the City of Louisville for integrity, veracity, and credibility on oath, Elias R. Dearing or Daniel R. Southard? Which of their statements would you give the greatest weight to when swearing for an interest, and to which of them would you confide your rights with the greatest degree of confidence? Have you ever known Dearing to be indicted, or liable to indictment, for false swearing, and has not such been the fact with Southard?

Cross-interrogatory No. 3, to same.

If it were proven to your mind that Daniel R. Southard should have induced this same Elias R. Dearing, for a promised consideration of five hundred dollars ($500), to be the instrument of enticing an old and inebriated man to coffee-houses, where, after plying him freely with liquor till intoxicated, or greatly excited, should then, in connexion with others leagued in for the purpose, interrogate him as to a past transaction, with a special view of entrapping him and impeaching his testimony previously given in a legal trial, and when, after having so interrogated him, the said Southard should have caused the said Dearing to swear the same as statements volunteered on the part of said Wood, and then being detected in it, he, Dearing, gives a counter-affidavit, disclosing the whole scheme, for the doing of which, after being thus influenced to act, the said Southard, to get clear of the legal consequences and presumptions of his own acts, should turn upon Dearing to impeach his veracity,—then which, I ask you, would you esteem the honester man of the two?

Cross-interrogatory No. 4, to same.

How does Dearing compare for integrity, truth, and veracity, with Daniel S. Rapalge, if you know the latter? Is not Dearing's standing quite as good and respectable as that of Rapalge's? And would you not put him equally as fair, and give equally as much credit to his (Dearing's) oath?

Cross-interrogatory No. 3.

How long have you known Dr. Wood? Was he not in times past as much respected as anybody? Is not his family, though poor and humble, deemed worthy and respectable? Is not said Wood a regular-bred physician, or do you know anything about it?

Cross-interrogatory No. 4.

What do you know about Wood's circumstances at that time, and how did you derive your information?

Cross-interrogatory No. 5.

How do you know that he could or could not have had that amount of money? Might he not have had several hundred dollars, and you know nothing about it?

Cross-interrogatory No. 6.

How do you know who attended Col. Russell's negroes? Were you daily about his farm, so as to know that fact? Don't you suppose that Russell and his agent Wing is about as likely to know who did or did not attend upon their negroes as yourself?

A copy; attest,
JOHN A. MONROE,
C. C. C. K. D.

Joshua F. Bullitt's Deposition.

Deposition of Joshua F. Bullitt.

The deposition of Joshua F. Bullitt, taken before William A. Hauser, at the office of Pilcher and Hauser, in the City of Louisville and State of Kentucky, to be read on the part of Daniel R. Southard and others against Gilbert C. Russell, on Bill of Review, now pending in the Circuit Court of the United States for the 8th Circuit and District of Kentucky, by authority of the annexed order of the said Court and commission on the interrogatories thereto attached and herein described, on the 25th day of February, 1853. The deponent being of lawful age, and personally known to the undersigned, and solemnly sworn, and cautioned to state the whole truth, and to make true and perfect answers to the several interrogatories propounded to him, and having been duly examined by the undersigned, doth depose and say in answer to

Interrogatory No. 1.—Are you acquainted with the general character for veracity of Elias R. Dearing, of Louisville? If so, state what that character is.

Answer.—I know Mr. Dearing, and his character is notoriously bad.

Interrogatory No. 2.—From your knowledge of the character of

Elias R. Dearing for veracity, do you think him entitled to credit on oath?

Answer.—From his general character, I do not believe him entitled to credit on oath.

Interrogatories 3, 4, 5, 6, 7, waived.

Interrogatory 8.—Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer.—I am not aware that I know anything further material.

Cross-examined on the part of Gilbert C. Russell.

Cross-interrogatory No. 1.—From what source of information have you derived your knowledge about Elias R. Dearing, or his reputation for truth and veracity? Is it from personal knowledge or report? If from report, who informed you, and when?

Answer.—My opinion is derived from report. Dearing once appeared before the Board of Aldermen as a witness, of which I was then a member, and I heard a good deal there said about his character; and everybody I then heard say anything about his character, they considered him unworthy of belief. I have frequently heard him spoken of before and since, and everybody answered of him in the same way.

The counsel of defendant waived the giving of names.

Cross-interrogatory No. 2.

Has not Elias R. Dearing lived in Louisville for many years; and has he or not been personally known to D. R. Southard during the whole of that time; and has not Mr. Southard had equally as good a chance to know his reputation for truth and veracity as you have? Has he not known him as long and as well as you have, and could he well be ignorant of anything pertaining to Dearing's public reputation?

Answer.—I think Dearing has lived in Louisville a good many years, and that Southard has also lived in Louisville and its vicinity a good many years. I do not know whether Southard knew him personally or not. Dearing's reputation was so bad that I think Southard must have known it, if he knew him at all.

Cross-interrogatory No. 1 to No. 2, waived.

Cross-interrogatory to 2, to same.

Which stands the best in the City of Louisville for integrity, veracity, and credibility on oath, Elias R. Dearing or Daniel R. Southard, which of their statements would you give the greatest weight to, when swearing for interest; and to which of them would you confide your rights with the greater degree of confidence? Have you ever known Dearing indicted, or liable to indictment, for false swearing; and has not such been the fact with Southard? Counsel for complainants excepts to the foregoing interrogatory, so far as it refers to Southard, or to comparison of characters of Southard and Dearing, as incompetent.

Answer.—Southard is a man of notoriously bad character. I do not consider him more worthy of belief than *Southard.* I do not know anything of indictments as to either of the parties.

Cross-interrogatory No. 3, waived. Cross-interrogatory No. 4, waived. Cross-interrogatories Nos. 5 and 6, waived.

And further this deponent saith not.

J. F. BULLITT.

James Speed's Deposition.

Deposition of James Speed.

Also the deposition of James Speed, taken at the same time and place, and for the purposes mentioned in the above caption, the deponent being of lawful age, and personally known, and first being duly cautioned and sworn, states, in answer to interrogatory No. 1.

He is acquainted with Elias R. Dearing's general character for veracity, having very often heard it spoken of. His character for veracity is as bad as that of any man he has ever known. He has often heard Dearing spoken of as a man that had been, and could be hired to testify.

Answer to No. 2.

From his knowledge of Elias R. Dearing's character for veracity, he does not think Dearing entitled to credit on oath.

Interrogatory No. 3.—State, if you know, what was the pecuniary condition, or condition as to property, of Peter Wood, commonly called Dr. Wood, of Jefferson County, Kentucky, who testified in the suit of G. C. Russell against D. R. Southard, &c., in this Court, between the years 1824 and 1830?

Answer.—Deponent was a boy at the time mentioned. He knew, and still knows Dr. Peter Wood, of Jefferson County. He does not know that he, Wood, deposed in the case of Russell and Southard. He did not know Wood's pecuniary condition. Dr. Wood lived in the neighborhood of deponent's father, in a house that belonged to David L. Ward. Deponent was never in his house but once, that was comfortable. Wood practised medicine in the neighborhood.

Interrogatories 4, 5, 6, and 7, waived.

Answer to No. 8.—He knows nothing more that he deems would be material to the parties, or either of them.

Cross-examined by Russell.

Cross-interrogatory No. 1, waived.

Answer to Cross-interrogatory No. 2.—He thinks Dearing has been living in Louisville 15 or 20 years, probably longer. Whether he has been personally known to D. R. Southard the whole, or any part, of that time, deponent does not know. Mr. Southard has had as good an opportunity to know Elias R. Dearing as deponent, and also to know his reputation for truth and veracity. It seems to deponent that Daniel R. Southard ought to have known Dearing's public reputation, but of course it is possible that Southard did not know it.

Cross-interrogatory No. 3, waived.

Answer to Cross-interrogatory No. 4.—Counsel for complainants object to this question as impertinent, so far as it relates to the character of Southard. "Best" is not the word deponent would use in speaking of either Dearing or Southard. Dearing is greatly more infamous in this community than Southard. Deponent would be slow to believe either when interest was in the scale; but from general reputation, thinks Dearing the worst man.

5, 6, 7, 8, 9, 10 waived, and further saith not.

JAMES SPEED.

Bland Ballard's Deposition.

Deposition of Bland Ballard.

Also the deposition of Bland Ballard, taken at the same time and place and for the same purpose, the deponent being personally known to me, and of lawful age, and first being duly cautioned and sworn to speak the whole truth, deposes and says in answer to Interrogatory No. 1.

Answer.—I am acquainted with Elias R. Dearing's character for veracity. His character for veracity is bad. It is infamous.

Interrogatory No. 2.

Answer.—I do not think Elias R. Dearing entitled to credit on oath.

Interrogatories 3, 4, 5, 6, 7, waived.

Interrogatory No. 8.

Answer.—I do not know whether I know anything else material.

Cross-examined by Russell.

Interrogatory No. 1, waived.

Cross-Interrogatory No. 2.

Answer.—Elias R. Dearing has lived in Louisville many years. I cannot say that he has been known to Southard the whole of that time, nor can I say that Mr. Southard's chance of knowing him has been equal to mine, because Mr. Southard has not been so much about the courts, nor can I say that Southard has known him as long or as well as I have; but Dearing is a notorious character in Louisville, and it is hardly possible that Southard has not known him, and it is almost inconceivable that he is ignorant of his bad character.

Interrogatories 3, 4, 5, 6, 7, 8, 9, waived.

And further this deponent saith not.

BLAND BALLARD.

Deposition of A. J. Ballard.

Also the deposition of A. J. Ballard, taken at the same place, on the 26th day of February, 1853, to be read for the same purpose. The deponent being of lawful age, and personally known to me, and first being duly cautioned and solemnly sworn the truth to speak, deposes and says in answer to Interrogatory No. 1.

Answer.—I am acquainted with Elias R. Dearing's general character for veracity. His character for veracity is very bad.

Interrogatory No. 2.

Answer.—I would not myself believe Elias R. Dearing entitled to credit on oath. I would not myself believe him, and I believe no one else would believe him who knows him.

Interrogatories 3, 4, 5, 6, 7, waived.

Interrogatory No. 8.—I do not know that I know anything material.

Cross-examined by Gilbert C. Russell.

Cross-interrogatory No. 1, waived.

Cross-interrogatory No. 2.

Answer.—Dearing has lived here many years. I have myself known him for fourteen or fifteen years here. I do not know whether Dearing and Southard are acquainted, though it is probable they are. I have for fourteen years been a practising lawyer here. When I came to this city, Dearing was a member of the police, and in that character his conduct has come under my observation. He has since been occasionally connected with the police, and I have often heard his character spoken of. In this way I have become acquainted with him. I do not know what Southard's chances were for

Cross-interrogatory No. 3, waived.

Cross-interrogatory No. 4.

Answer.—I think the character of Southard is better than that of Dearing. I would not believe Southard in a matter where he was interested, though I believe that Southard, from his position here, having a family, and social and other relations with the citizens of Louisville, would be more disposed to tell the truth than Dearing.

He would have more to lose, and would be more apt to speak the truth; while, at the same time, if the reliance was solely on his intrinsic probity and integrity, I would not believe him.

Cross-interrogatories 5, 6, 7, 8, 9, 10, waived.

Cross-interrogatory No. 11.

Answer.—I suppose there are citizens here who do not know Dearing; but as Dearing has lived in the upper part of the city, and Southard is an old citizen, and has lived in the upper part of the city, and in the vicinity of the city at the upper part, I think it highly probable that Southard must have known his character. And further this deponent saith not.

A. J. BALLARD.

John P. Oldham's Deposition.

John P. Oldham's Deposition.

Also the deposition of John P. Oldham, taken at the house of said Oldham in Jefferson County, on 28th February, 1853, to be used for the same purpose. Deponent being of lawful age, personally known to the undersigned, and solemnly cautioned, and first sworn to speak the truth, the whole truth, and nothing but the truth, and to make true and perfect answers to the questions propounded to him, doth depose and say, in answer to

Interrogatory No. 1.—State when Clayton Talbot sold the property which, in 1827, he owned in or near Huntsville, Ala., &c.

(This is an error of Commissioner. The examination of John P. Oldham is not completed here.—CLERK.)

W. W. Lawes's Deposition.

Deposition of W. W. Lawes.

Also the deposition of Wm. W. Lawes, taken at the same place and for the same purpose, on the 4th day of March, 1853, the deponent being of lawful age, personally known to me, duly cautioned, and first solemnly sworn to tell the truth, deposes and says in answer to

Interrogatories No. 1 and 2, waived.

Interrogatory No. 3.—State if you know what was the pecuniary condition, or condition as to property, of Peter Wood, commonly called Dr. Wood, of Jefferson County, Kentucky, who testified in the suit of G. C. Russell against D. R. Southard, &c., in this Court, between the years 1824 and 1830.

Answer.—I have known said Wood upwards of thirty years, and during that time he has been in limited circumstances, and I did not know of his owning any property.

Interrogatory No. 4.—Was said Wood in affluent or indigent circumstances?

Answer.—I think that he made a bare support ever since I knew him, and of later years I think his wife has helped to the support of the family.

Interrogatory No. 5.—Could he have had one or two hundred dollars to loan between those periods?

Answer.—I don't think he had money to loan between those periods.

Interrogatory No. 6.—Was he physician for, or did he attend the servants or family of Russell on his farm near Louisville, within said time, as a physician, to the amount of one or two hundred dollars?

Answer.—I don't know.

Interrogatory No. 7, waived.

Interrogatory No. 8.—Do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? if yea, set forth the same fully, and at large in your answer.

Answer.—I know nothing further material which I am instructed I can answer under these interrogatories, unless it be as to Dr. Wood's credibility on oath, and as to this, I am told by the commissioner I can say nothing under these interrogatories.

Cross-examined by Russell.

Interrogatories No. 1, and 2.—Waived.

Cross-interrogatory No. 3.—How long have you known Doctor Wood? Was he not in times past, as much respected as any body? Is not his family, though poor and humble, deemed worthy and respectable. Is not said Wood a regular-bred physician, or do you know anything about it?

Answer.—I have known him upwards of thirty years. When I first knew him, he moved in a good circle of society, and was respected for a time. His family is very respectable. I mean his wife and children. I don't know whether he had a diploma, but he practised medicine.

Interrogatory No. 4.—What do you know about Wood's circumstances at that time, and how did you derive your information?

Answer.—I know of no visible means of a support he had, except from his practice, while he lived in the county, and while he lived in the City of Louisville. I derived my knowledge by observation.

Cross-interrogatory No. 5.—How do you know, that he could or could not, have had the amount of money? Might he not have had several hundred dollars, and you know nothing of it?

Answer.—I do not know that he certainly could not have had that much money, but from his appearance in life, I do not think he had any money to lend. He might have had several hundred dollars, and I not know it, but from his apparent situation in life, I do not think that he had any money to lend.

Interrogatory No. 6.—Waived.

And further, this deponent saith not.

W. W. LAWES.

John Howard's Deposition.

Deposition of John Howard.

Also the deposition of John Howard, taken at the same place, for the same purpose, on the 5th day of March, 1853, the deponent, being of lawful age, personally known to me, and duly cautioned, and first, solemnly sworn the truth to speak, in answer to such questions as shall be put to him, deposes and says in answer to

Interrogatories No. 1 and 2.—Waived.

Interrogatory No. 3.—Answer.—I have known Doctor Wood since 1820. I always considered him, he always has been considered, a very poor man. He practised medicine, and got some practice in the neighborhood in which I lived.

Interrogatories No. 4 and 5.—Answer.—As before stated, in his circumstances, he has always been considered a poor man. I do not think that he was in a condition to lend any money.

Interrogatory No. 7.—Waived.

Interrogatory No. 8.—Answer.—I know of nothing that I know material.

In answer to suggestions by Russell's counsel, I answer, no person has ever suggested to me, that Doctor Wood has ever loaned any money.

Cross-questioned by Russell's counsel.

Cross-interrogatories Nos. 1, 2, 3, 4, 5.—Waived.

Cross-interrogatory No. 6.

Answer.—I have known Doctor Wood since 1820, as I recollect. He was in times past considered quite a respectable man. I know nothing about his family now, though in times past they were respectable. As to Wood's being a regular-bred physician, I know not; he has been practising medicine since I have known him.

Cross-interrogatories Nos. 7, 8, 9.—Waived.

And further this deponent saith not.

JOHN HOWARD.

Joseph Jeans' Deposition.

Deposition of Joseph Jeans.

Also the deposition of Joseph Jeans, taken at the same time and place, and for the same purpose. The deponent being of lawful age, personally known to me, and duly cautioned, and first solemnly sworn the truth to speak in answer to such questions as shall be put to him, deposes and says in answer to

Interrogatory No. 1.

Answer.—I know Elias R. Dearing I have known him for the last 13 or 14 years. I know that Elias R. Dearing's general character for veracity is bad.

Interrogatory No. 2.

Answer.—From my knowledge of his general character, I do not think him entitled to credit on oath, in a court of justice.

Interrogatories Nos. 3, 4, 5, 6.—Waived.

Interrogatory No. 8.

I know nothing that I know further material.

Interrogatories 3, 4, 5, 6, were read to the witness at the request of Mr. Thruston, and witness answered that he knew nothing.

Russell's counsel, objects to any questions being put to the witness, under Interrogatory No. 8, which goes to elicit matters not called for in the regular interrogatories, to which defendant could not have an opportunity to cross-interrogate; and further, objects to complainant's counsel writing out and presenting specific interrogatories, through the commissioner, by way of suggestions, as is here done.

Southard's counsel suggested to the commissioner in writing to the witness, what have been the associations of Mr. Dearing, generally, since you knew him, by day or by night?—Set forth fully.

Answer.—I have seen him associate with good people, and with bad people, but he generally associated with bad characters, men of evil fame, and women of evil fame.

Suggestions under the same, by Russell's counsel, on terms.

Answer.—I have no unfriendly relations with Dearing. I do not know that I have expressed any dislike to Dearing. I don't look upon him as a correct man.

Cross-interrogated by Russell.

Cross-interrogatory No. 1.

Answer.—My information is from a good source, and a bad source. His character has been a general talk, for the last three or four years. My knowlege of his character, is from general report. His character is of general notoriety.

Cross-interrogatory No. 2.

Answer.—Dearing has been living here ever since I knew him, and I heard of him before I knew him. I do not know how long Southard has known him. I could not say whether Southard lived in the country, or in town. I have had a slight acquaintance with him, for the last three or four years. I don't know what Southard's chances were for knowing Dearing, but if Southard has been living about the city all the time, he must have known something, or heard something, about his character.

Cross-interrogatory No. 3.

Answer.—I have heard enough from gentlemen to be satisfied I would not believe him on oath. I do not wish to give names.

Interrogatory No. 4 waived.

The defendant's counsel waives all the balance of the cross-interrogatories. And further this deponent saith not.

JOSEPH JEANS.

UNITED STATES OF AMERICA.
8th Circuit, Kentucky District, City of Louisville, sct.

I, William A. Hauser, Commissioner, pro tem., by order of said Court in the said Circuit and District, certify that the foregoing depositions of J. F. Bullitt, James Speed, B. Ballard, A. J. Ballard, Wm. W. Lawes, John Howard, and Joseph Jeans, were taken at the place and at the time, in the behalf, in the suit, under the authority and upon the interrogatories mentioned in the caption; that said depositions (except that of James Speed, which he reduced to writing in my presence) were reduced to writing by me in the presence of said witnesses; that I duly cautioned and solemnly swore each of said witnesses; that they signed the said depositions in my presence; that I am not of kin or of counsel for either of the parties, nor interested in the matters of controversy between them.

Given under my hand this 5th March, 1853.

WM. A. HANSER,
Commissioner, pro tem.

Interrogatories.

Interrogatories.

DANIEL R. SOUTHARD, &c.,
vs. } In Equity.
GILBERT C. RUSSELL.

Interrogatories for Thomas P. Camp and others, to be examined as witnesses on behalf of complainants:

Joseph Jeans' Deposition.

Deposition of Joseph Jeans.

Also the deposition of Joseph Jeans, taken at the same time and place, and for the same purpose. The deponent being of lawful age, personally known to me, and duly cautioned, and first solemnly sworn the truth to speak in answer to such questions as shall be put to him, deposes and says in answer to

Interrogatory No. 1.

Answer.—I know Elias R. Dearing I have known him for the last 13 or 14 years. I know that Elias R. Dearing's general character for veracity is bad.

Interrogatory No. 2.

Answer.—From my knowledge of his general character, I do not think him entitled to credit on oath, in a court of justice.

Interrogatories Nos. 3, 4, 5, 6.—Waived.

Interrogatory No. 8.

I know nothing that I know further material.

Interrogatories 3, 4, 5, 6, were read to the witness at the request of Mr. Thruston, and witness answered that he knew nothing.

Russell's counsel, objects to any questions being put to the witness, under Interrogatory No. 8, which goes to elicit matters not called for in the regular interrogatories, to which defendant could not have an opportunity to cross-interrogate; and further, objects to complainant's counsel writing out and presenting specific interrogatories, through the commissioner, by way of suggestions, as is here done.

Southard's counsel suggested to the commissioner in writing to the witness, what have been the associations of Mr. Dearing, generally, since you knew him, by day or by night?—Set forth fully.

Answer.—I have seen him associate with good people, and with bad people, but he generally associated with bad characters, men of evil fame, and women of evil fame.

Suggestions under the same, by Russell's counsel, on terms.

Answer.—I have no unfriendly relations with Dearing. I do not know that I have expressed any dislike to Dearing. I don't look upon him as a correct man.

Cross-interrogated by Russell.

Cross-interrogatory No. 1.

Answer.—My information is from a good source, and a bad source. His character has been a general talk, for the last three or four years. My knowlege of his character, is from general report. His character is of general notoriety.

Cross-interrogatory No. 2.

Answer.—Dearing has been living here ever since I knew him, and I heard of him before I knew him. I do not know how long Southard has known him. I could not say whether Southard lived in the country, or in town. I have had a slight acquaintance with him, for the last three or four years. I don't know what Southard's chances were for knowing Dearing, but if Southard has been living about the city all the time, he must have known something, or heard something, about his character.

Cross-interrogatory No. 3.

Answer.—I have heard enough from gentlemen to be satisfied I would not believe him on oath. I do not wish to give names.

Interrogatory No. 4 waived.

The defendant's counsel waives all the balance of the cross-interrogatories. And further this deponent saith not.

JOSEPH JEANS.

UNITED STATES OF AMERICA.
8th Circuit, Kentucky District, City of Louisville, sct.

I, William A. Hauser, Commissioner, pro tem., by order of said Court in the said Circuit and District, certify that the foregoing depositions of J. F. Bullitt, James Speed, B. Ballard, A. J. Ballard, Wm. W. Lawes, John Howard, and Joseph Jeans, were taken at the place and at the time, in the behalf, in the suit, under the authority and upon the interrogatories mentioned in the caption; that said depositions (except that of James Speed, which he reduced to writing in my presence) were reduced to writing by me in the presence of said witnesses; that I duly cautioned and solemnly swore each of said witnesses; that they signed the said depositions in my presence; that I am not of kin or of counsel for either of the parties, nor interested in the matters of controversy between them.

Given under my hand this 5th March, 1853.

WM. A. HANSER,
Commissioner, pro tem.

Interrogatories.

Interrogatories.

DANIEL R. SOUTHARD, &c.,
vs. } In Equity.
GILBERT C. RUSSELL.

Interrogatories for Thomas P. Camp and others, to be examined as witnesses on behalf of complainants:

State whether Ambrose Camp rented from Philip Richardson, year 1828, the garden and gardener's house, or any other of land near Louisville, conveyed by Gilbert C. Russell to James Southard, deceased?

2d. State what was the amount paid or to be paid for rent by Camp to Richardson?

3d. State whether you have or have not seen a receipt for said rent, and where said receipt has been, when and how found? And if in your power, file said receipt with your deposition, and state all you know about it.

4th. State whether there was any cord-wood cut and stacked on the land when Richardson rented of Southard; if any, how much?

5th. Was there, or was there not, on said tract of land a briar patch, in which five hundred dollars worth of wood could have been corded up, and remaining there when Richardson rented, without Southard's knowing it was there?

6th. If there had been several hundred dollars' worth of wood cut and corded on the land at the time, would Southard have permitted Richardson to keep it without paying for it?

No. 7. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

NICHOLAS, HAGGIN & HARRIS,
For Complainants.

Cross-interrogatories on the part of G. C. Russell to the several interrogatories propounded to Thomas P. Camp and others by Daniel R. Southard and others, to be read as evidence in the United States Circuit Court:

Cross-interrogatory to Nos. 1, 2 and 3.

State whether or not you have any personal knowledge of the contract for rent between Philip Richardson and Ambrose Camp in the year 1828? Was you present when the contract was made, or is your impression about that matter based mainly upon the purport of the receipt which you refer to?

Cross-interrogatory No. 2, to same.

Who applied to you for said receipt, and into whose hands did you deliver the same, and for what purpose? In whose handwriting is said receipt, and by whom signed? Is it signed by Philip Richardson? if not, why?

Cross-interrogatory to No. 4.

Did you either examine or measure said wood, if any there was on said place? If not, what means have you of knowing anything about it?

Cross-interrogatory to No. 5.

What means have you of knowing whether James Southard did or did not know of any wood being cut on the place? Do you know whether there was or was not any wood cut on the place at the time of the conveyance from Russell to Southard, and was you familiar with the place, and was there any large briar patches on it, or was the place pretty clear of briars, and in good order for cultivation and farming? Please give us your best information and recollection about this matter.

Cross-interrogatory to No. 6.

As to whether James Southard might or might not have permitted Philip Richardson to take the wood cut on the place without paying for it specifically, would not that have depended on the nature of their contract, and what means have you of knowing that?

Cross-interrogatory No. 7.

Do you not entertain, and have you not expressed, unkindly and hostile feeling towards Philip Richardson?

Cross-interrogatory No. 8.

Do you or not know anything about the nature of the conveyance from Russell to Southard, whether the sale was an absolute sale or not? Have you not understood, and did you not then understand, that Russell had reserved to himself the right to redeem said farm? And did you not then understand that the Southard had in some way taken the advantage of Russell, and had defrauded him? State all you know or have heard on this subject.

Cross-interrogatory No. 9.

What was James Southard's character in the transactions of business? Was he or not considered a close and exacting man in his dealings? Was he a man who would gratuitously surrender the advantage in a good bargain when he held it? Was he or not a usurer, and did he not use his money at usurious rates of interest, and in speculating and shaving? State all you know of his character in this respect.

STEWART, MOREHEAD & MONROE,
For RUSSELL.

A copy; attest,

JOHN A. MONROE,
C. C. C. K. D.

Mary S. Camp's Deposition.

Deposition of Mary S. Camp.

The deposition of Mary S. Camp, taken on the part of complainant, at the house of Anthony Miller, in the County of Jefferson, in the State of Kentucky, to be used as evidence in the suit pending on

Bill of Review, in the United States Court for the 8th Circuit and Kentucky District, wherein Daniel R. Southard and others are complainants, and Gilbert C. Russell is defendant, on the 12th day of February, 1853, by authority of the attached commission, and upon the interrogatories thereto annexed, and herein described. Deponent being of lawful age, and personally known to the undersigned, and having been duly cautioned and sworn to state the whole truth, and to make true and perfect answers to said interrogatories, and having been duly examined by the undersigned, doth depose and say, in answer to

Interrogatory No. 1.—State whether Ambrose Camp rented from Philip Richardson, for the year 1828, the garden and gardener's house, or any other portion of land near Louisville, conveyed by Gilbert C. Russell to James Southard, deceased.

Answer.—Yes, sir. He rented the garden and gardener's house for the year, I think, of 1828.

Interrogatory No. 2.—State what was the amount paid, or to be paid, for rent by Camp to Richardson.

Answer.—The amount to be paid was $75 per year.

Interrogatory No. 3.—State whether you have or have not seen a receipt for said rent, and where said receipt has been; when, and how found, and if in your power, file said receipt with your deposition, and state all you know about it?

Answer.—I have seen a receipt for said rent. Said receipt has been in my possession, among the papers of Ambrose Camp, of whom I am the widow, and in looking over his papers, I found it some time in the course of the present winter, or the last few months, and I sent the said receipt by Minor Gray, my brother, to Judge Nicholas, who, I understood, wanted it. I suppose said receipt is in the possession of the said Nicholas, or under his control; not being in my possession, I cannot file it. Said receipt is signed by *Elizabeth Richardson, for Mr. Richardson*, which Mr. Richardson was Philip Richardson, who was present at the signing of said receipt, and saw his wife sign it for him in my presence.

Interrogatory No. 4.—State whether there was any cord-wood cut, and stacked on the land, when Richardson rented of Southard; if any, how much?

Answer.—I know nothing about the briar patch or cord-wood.

Interrogatory No. 5.—Was there, or was there not, on said tract of land, a briar patch, in which five hundred dollars' worth of wood could have been corded up, and remaining there when Richardson rented, without Southard knowing it was there?

Answer.—I have answered this in my response to No. 4.

Interrogatory No. 6.—If there had been several hundred dollars' worth of wood cut and corded on the land at the time, would Southard have permitted Richardson to keep it without paying for it?

Answer.—I can't answer that, as I know nothing about it.

Interrogatory No. 7.—Do you know, or can you set forth any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer.—I know nothing further, that I now remember, material to either of the parties to this suit.

Cross-interrogatories.

Cross-interrogatory No. 1.—State whether or not you have any personal knowledge of the contract for rent between Philip Richardson and Ambrose Camp, in the year 1828? Were you present when the contract was made, or is your impression about that matter based mainly upon the purport of the receipt which you refer to?

Answer.—I recollect that Captain Camp, as before stated, rented the house and garden of Philip Richardson in 1828, he himself being tenant of Southard in that year. I had forgotten the terms of renting (*i. e.*), the price, until I found said receipt. I have no personal knowledge of the said writing. I was not present when the bargain was made. My recollection was that the price of the rent was $75; but I was not certain until I found said receipt.

Cross-interrogatory No. 2.—Who applied to you for said receipt, and into whose hands did you deliver the same, and for what purpose? In whose handwriting is said receipt, and by whom signed? Is it signed by Philip Richardson? if not, why?

Answer.—Thomas Camp applied to me for said receipt, and I delivered it to Minor Gray to deliver to Judge Nicholas. I made no inquiry of what they wanted it for. I cannot say in whose handwriting said receipt is. It is signed by Elizabeth Richardson, as before stated, and for the reason, as is my impression, that he could not write, and his wife did his writing for him. I mean that I do not know the handwriting in the body of said receipt.

Cross-interrogatory No. 4.—Did you either examine or measure said wood, if any there was on said place? If not, what means have you of knowing anything about it?

Answer.—I repeat that I know nothing of any wood on said land.

Cross-interrogatory No. 5.—What means have you of knowing whether James Southard did or did not know of any wood being cut on the place? Do you know whether there was or was not any wood cut on the place at the time of the conveyance from Russell to Southard? Were you familiar with the place? and was there any large briar patches on it? or was the place pretty clear of briars, and in good order for cultivation and farming? Please give your best information and recollection about this matter.

Answer.—In answer to this question, I say it contains matters to which my attention was never called, and of which I know nothing.

Cross-interrogatory No. 6.—As to whether James Southard might or might not have permitted Philip Richardson to take the wood cut on the place without paying for it specifically, would not that have depended on the nature of the contract? and what means have you of knowing that?

Answer.—As to this question, I answer that I know nothing.

Cross-interrogatory No. 7.—Do you not entertain, and have you not expressed, unkind feelings towards Philip Richardson?

Answer.—The answer to this interrogatory is waived by Russell's attorney.

Cross-interrogatory No. 8.—Do you or not know anything about the nature of the conveyance from Russell to Southard, whether the sale was an absolute sale, or not? Have you not understood, and did you not then understand, that Russell had reserved to him the right to redeem said farm, and did you not then understand that the Southards had in some way taken the advantage of Russell, and had defrauded him? State all you know or have heard on this subject.

Answer.—The foregoing interrogatory, and answer thereto, are waived by Russell's attorney; yet the witness says, I don't know, and never heard anything about the subject-matter of this cross-interrogatory.

Cross-interrogatory No. 9.—What was James Southard's character in the transactions of business? Was he, or not, considered a close and exacting man in his dealings? Was he a man who would gratuitously surrender the advantage in a good bargain, when he held it? was he, or not, a usurer? And did he not use his money at usurious rates of interest, and in speculating and shaving? State all you know of his character in this respect?

Answer.—We never had any dealings with Mr. James Southard, and I therefore know and can say nothing about him, or his business habits. And further sayeth not.

MARY S. CAMP.

M. D. Roberts' Deposition.

Deposition of Mortimer D. Robards.

Also the deposition of Mortimer D. Robards, taken at the office of William S. Pilcher, in the City of Louisville, on the 19th of February, 1853, to be read in the same cause, on the same behalf, under the commission and interrogatories hereto attached and hereinbefore described; deponent being of lawful age, personally known to the undersigned, and solemnly cautioned and sworn, doth depose and say in answer to

Answer to Interrogatory No. 1.—I do not know.

Answer to Interrogatory No. 2.—I do not know.

Interrogatory No. 3.—Waived by Russell's attorney.

Answer to Interrogatory No. 4.—I do not know.

Answer to Interrogatory No. 5.—I suppose there could not have been 500 cords of wood cut, and stacked on the land, without Southard's knowing it. He was a very industrious man, and would have known everything that was upon the land. I do not believe that there could have been $500 worth of anything on the land, without his knowing it.

Answer to Interrogatory No. 6.—From the acquaintance I had with Southard, I should suppose he would not have permitted Richardson to keep 500 cords of wood, without paying him for it.

Answer to Interrogatory No. 7.—I did know the gardener's house, and the garden attached thereto, on the Southard place. I don't know the number of acres it contained. I suppose as land rented in them days, in 1828, said house and garden, was not worth, for rent, more than $75 per annum. I desire here to correct a statement I made in my deposition given — the original suit of Russell against Southard. I find, on reflection, that I was mistaken in the year that Richardson rented the place. I stated it to be in the year 1829; I now find that it was in 1828. At the suggestion of Russell's counsel, I state that W. T. Haggin, one of the attorneys for Southard, did tell me that the sum of $75 was the rent paid by Camp to Richardson, for the gardener's house and garden, on the Southard ——, for the year 1828, as mentioned in a receipt from Richardson to Camp, but that was no criterion for me. I state what the said rent was worth from my own knowledge. I suppose the garden contained four or five acres.

Cross-interrogatories.

Answer to Cross-interrogatory No. 1, to original interrogatories No. 1, 2, and 3.—Waived by Russell's attorney.

Cross-interrogatory No. 2.—To same, also waived by same.

Cross-interrogatory No. 3, to No. 4.—Also waived by same.

Cross-interrogatory No. 4, to No. 5.

Answer.—I was familiar with the place all my life; there never was any briar patch on it, that I knew of, large enough to conceal $500 worth of wood from such a man as James Southard. I suppose the place was pretty clear of briars, and in pretty good order for cultivation, but I don't know—or Philip Richardson would not have paid the price that I understood that he did pay for it.

Cross-interrogatory No. 5, to No. 6.

Answer.—I answer, that it was my opinion, that it would have depended upon the nature of the contract, if Southard had permitted

Richardson to have taken the wood, without paying for it specifically, as I do not suppose that James Southard would have given him $500 worth of wood. I know from the mouth of both Southard and Richardson what was the contract for renting of the farm; they told me it was three hundred dollars, but I know of and never heard of any contract for wood.

(*Exception right here.*)

The counsel for Russell excepts to that part of the answer of this witness which is in these words, "I know from the mouths of both Southard and Richardson what was the contract for renting of the farm; they told me it was three hundred dollars," as not being responsive to nor in the scope or call of the question, either the original or cross-interrogatory which is certified.

W. S. PILCHER,
Commissioner.

Cross-interrogatory No. 6, to Interrogatory No. 7.—Waived by Russell's counsel.

Cross-interrrogatory No. 7, to Interrogatory No. 8.—Also waived.

Cross-interrogatory No. 8, to No. 9.

Answer.—James Southard was a close industrious business man, and tried to make money on his farm; as to his loaning money at usurious interest, I did not know it, and never heard of it. And further sayeth not.

M. D. ROBARDS.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, City of Louisville.

I, William S. Pilcher, Commissioner of affidavits, &c., in and for the Circuit and District aforesaid, certify, that the foregoing depositions of Mary S. Camp and Mortimer D. Robards, were taken on the behalf in the suit, and at the places and times mentioned in their respective captions. That going and coming to and from the place of taking the deposition of said Mary S. Camp, is a distance from Louisville of and in about thirty miles. That each of said depositions was reduced to writing by me, in the presence of each of said witnesses respectively, and carefully read over to them respectively by me. That each of them solemnly swore to his respective deposition before me, and subscribed the same in my presence. That I am not of kin, or of counsel to or for either of the parties, or in any way interested in the event of the controversey. Given under my hand, at my office, in the City of Louisville, this 22d February, 1853.

WM. S. PILCHER,
Commissioner, &c.

Thomas P. Camp's Deposition.

Deposition of Thomas P. Camp.

Also the deposition of Thomas P. Camp, taken before William A. Hauser, at the same place as M. D. Robards, on the 28th February, 1853. The deponent being of lawful age, personally known to the undersigned, and solemnly cautioned and sworn to speak the truth, and to make true and perfect answers to the questions propounded to him, doth depose and say in answer to

Interrogatory No. 1.

Answer.—I am Ambrose Camp's son, and in the year 1828, my father occupied the garden and gardener's house pertaining to the farm now in controversy.

Interrogatory No. 2.

Answer.—He has no knowledge what his father paid, except from the receipt to be filed with his deposition.

Interrogatory No. 3.

Answer.—I have seen a receipt for the rent, which receipt he files as part hereof (marked C), and is the same receipt referred to in the deposition of Mary S. Camp. Said receipt has been in the possession of Mary S. Camp, widow of Ambrose Camp. Judge Nicholas spoke to me in relation to the rent, and desired information; and when deponent returned home, he got his mother to look among his father's papers, and this receipt was found. Said receipt is signed by Elizabeth Richardson for Mr. Richardson. I do not know that Mr. Richardson could then write, think he could not, but when there was matter requiring writing, Mrs. Richardson generally attended to it for him. I know of one or two of Mr. Richardson's family who could not write.

Interrogatory Nos. 4, 5, and 6.

Answer.—I know nothing.

Interrogatory No. 7.

Answer.—When called on by Judge Nicholas to state the reasonable rent of the place about the year 1828, I fixed it at between fifty and seventy-five dollars; this was before I had seen the said receipt. I still think the above estimate of rent was about right.

Cross-questioned by Gilbert C. Russell.

Cross-interrogatory No. 1.

Answer.—I have answered that. I have no personal knowledge of the contract.

Cross-interrogatory No. 2.

Answer.—No person applied for the receipt. As before stated, Judge Nicholas applied for information in relation to the rent. I sent the receipt to Minor Gray to deliver to Judge Nicholas, and I supposed that Gray did deliver it. I can't say in whose handwriting the receipt is; my impression is that it is in the handwriting of Mr. D. Southard. The receipt purports to be signed by Mrs. Richardson, for Mr. Richardson, but I do not know that she signed it. He has heretofore stated he believed that Mr. Richardson could not write.

Cross-interrogatory No. 4.

Answer.—He has heretofore said he knows nothing about any cord-wood being there.

Cross-interrogatory No. 5.

Answer.—I know nothing about any cord-wood. I was familiar with the portion my father occupied, but I know nothing of the boundaries of the land, and know nothing of the briar patches.

Cross-interrogatory No. 6.

Answer.—I know nothing, except that I have not entertained, nor have I expressed unkind or hostile feelings toward Philip Richardson; on the contrary, we have always been intimate and familiar.

Cross-interrogatory No. 8.

Answer.—I know nothing about the matters of this question.

Cross-interrogatory No. 9.

Answer.—I never had any dealing with James Southard, and I know nothing of his dealing character sufficient to state anything. I know nothing about his speculating and shaving.

And further this deponent saith not.

THOMAS P. CAMP.

Receipt referred to in Thomas P. Camp's deposition.

Received, November 14th, 1828, of Mr. Ambrose Camp, an obligation of Angro Gray's, for the payment of fifty-five dollars, payable 20th February, 1829, together with twenty dollars heretofore received, which, together, makes the sum of seventy-five dollars, being in full for one year's rent, expiring 20th February, 1829; and in full for all dues, debts, and demands existing between the parties.

$75. ELIZABETH RICHARDSON,
For MR. RICHARDSON.

Endorsed—Southard *vs.* Russell. } Exhibit "C," filed with Thomas P. Camp's deposition.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, City of Louisville.

I, William A. Hauser, Commissioner pro tem., by order of said Court, in the said Circuit and District, certify, that the foregoing deposition of Thomas P. Camp was taken at the place and time, in the behalf, in the suit, under the authority, and upon the interrogatories mentioned in the caption; that said deposition was reduced to writing by me, in the presence of said witness, that I duly cautioned and solemnly swore said witness; that he signed said deposition in my presence; that I am not of kin or of counsel for either of the parties, nor interested in the matters of controversy between them. Given under my hand this day and year as mentioned in the caption.

WM. A. HAUSER,
Commissioner pro tem.

Interrogatories.

Circuit Court of the United States for the State of Kentucky.

DANIEL R. SOUTHARD, and others,
against
GILBERT C. RUSSELL.
} In Equity on Bill of Review.

Interrogatories to the Hon. John P. Oldham, on behalf of the Complainants.

1st. State when Clayton Talbot sold the property which in 1827 he owned in or near Huntsville, Alabama, and for what price he sold it.

2d. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

NICHOLAS & HAGGIN, & HARRIS,
For Complainants.

Cross-interrogatories on the part of G. C. Russell, to the interrogatories propounded to the Hon. John P. Oldham by Daniel R. Southard and others.

Cross-interrogatory No. 1.

State where you resided in the year 1827, and whether you know anything about the character of the conveyance from G. C. Russell to James Southard, of the land near this city lately in controversy, whether the same was an absolute sale, or intended as a mortgage-security for money loaned?

Cross-interrogatory No. 2.

Did you not understand then that the conveyance was not intended to be absolute, but that Russell had reserved to himself the right to redeem the same? Please state all you may know, or may have heard on this point?

Cross-interrogatory No. 3.

What was James Southard's character as a trader? was he, or not, considered a close and exacting man in his dealings? Judging from his general character and his reputation, do you suppose he would gratuitously surrender the advantage in a good bargain if he could not be compelled to do so? Was he not a usurer, and did he not loan his money at usurious rates of interest?

MONROE, MOREHEAD & STEWART,
For Russell.

A copy; attest,

J. A. MONROE,
C. C. C. K. D.

John P. Oldham's Deposition.

Deposition of John P. Oldham.

Also the deposition of John P. Oldham, taken before me, William A. Hauser, Commissioner pro tem., at the house of said Oldham, in Jefferson County, Kentucky, to be read in behalf of Daniel R. Southard and others, in their suit against Gilbert C. Russell, on Bill of Review now pending in the Circuit Court of the United States, for the 8th Circuit and District of Kentucky, by authority of the annexed commission, on the interrogatories thereto attached, and herein described, on the 28th day of February, 1853. The deponent being of lawful age, and personally known to the undersigned, and duly cautioned, and first solemnly sworn to state the whole truth, and to make true and perfect answers to the several interrogatories propounded to him, and having been duly examined by the undersigned, doth depose and say in answer to

Interrogatory No. 1.—State when Clayton Talbot sold the property, which in 1827 he owned in or near Huntsville, Alabama, and for what price he sold it?

Answer.—I think he sold it between the years 1829 and 1831. He sold it for between three thousand and four thousand dollars payable on time, and with interest.

Interrogatory No. 2.—Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer.—I know nothing more.

Cross-examined by Defendant Russell.

Cross-question No. 1.—State where you resided in the year 1827, and whether you know anything of the character of the conveyance from Gilbert C. Russell to Daniel R. Southard, of the land near this city, lately in controversy?

Answer.—In 1827 I resided about four miles from the City of Louisville, near the Bardstown Turnpike. I know nothing of the character of the conveyance of the land from said Russell to said Southard.

Int. No. 2, waived.

Cross-int. No. 3.—What was James Southard's character as a trader? was he, or not, considered a close and exacting man in his dealings? Judging from his general character and reputation, you suppose that he would gratuitously surrender the advantage in a good bargain if he could not be compelled to do so? Was he not a usurer, and did he not loan his money at usurious rates of interest?

Ansr.—I have no recollection of James Southard's character as a trader. I recollect nothing about his dealings. I suppose that he would not gratuitously surrender an advantage in a good bargain unless compelled to do so. I do not know whether he was a usurer, or loaned money at usurious interest.

And further, this deponent saith not.

JNO. P. OLDHAM.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, City of Louisville, sct.

I, Wm. A. Hauser, Commissioner, by order of said Court, in the said Circuit and District, certify, that the foregoing deposition of John P. Oldham, was taken at the place and at the time, in the behalf, and upon the interrogatories mentioned in the caption; that said deposition was reduced to writing by me, in the presence of said witness; that I duly cautioned, and solemnly swore said witness, who signed his said deposition in my presence; that I am not of kin, or of counsel for either of the parties, nor interested in the matters of controversy between them. Given under my hand this 4th day of March, 1853.

WM. A. HAUSER,
Commissioner, pro tem.

Affidavit of George Hancock—part of his deposition which follows.

SOUTHARD, &c.
vs. } In Circt. Ct. of U. S., Ky. District.
RUSSELL.

George Hancock's Affidavit.

George Hancock states, that some time before Russell sold his farm near Louisville to Southard, he offered to sell it to affiant for $5000, and was very importunate with him to buy it at that price: he also made the same offer to affiant's sister, the late Mrs. Caroline Preston. Affiant thought the place a bargain at that price, and would have bought it, but was deterred from doing so, on inquiry, from the extreme bad repute in which the place was held for unhealthiness. Col. Taylor, the father of the late Gen. Zach. Taylor, told affiant that he had resided there, or near it at one time, and from the unhealthiness of the place he had been induced to suspect that the spring was affected with some deleterious mineral.

Col. Russell told me whilst conversing about the place, in explanation of the very high price he said he had given Floyd for the place, that he, Russell, had a heavy claim against the United States pending before Congress, and before it was allowed, Floyd offered to sell the farm to him at that price. He told Floyd that he was not able then to buy, but if his claim were allowed, he would give him his price for the farm; and the claim having afterwards been allowed, he thought himself bound to comply with his promise.

GEO. HANCOCK.

STATE OF KENTUCKY,
Jefferson County, sct.

Subscribed and sworn to before me, May 15th, 1852.

JAMES J. DOZIER,
Notary Public for Jefferson County aforesaid.

George Hancock states further, that he does not recollect when he had the first conversation with Daniel R. Southard, or his counsel, about the matters stated in the foregoing affidavit, but it was within the last six or eight months.

GEO. HANCOCK.

Personally appeared George Hancock before me this 20th May, 1852, and made oath to the truth of the foregoing additional affidavit.

JOHN W. TYLER,
Notary Public.

George Hancock's Deposition.

Deposition of George Hancock.

The deposition of George Hancock, taken at my office in the City of Louisville, on the 9th day of September, 1852, by consent of parties (counsel for each being present and consenting), to be read on behalf of plaintiff, in the suit now pending in the United States Court for the 8th Circuit and Kentucky District, wherein Daniel R. Southard, &c., are plaintiffs, and Gilbert C. Russell is defendant; deponent being personally known to me, of lawful age, and first duly cautioned and sworn, doth depose and say in answer to interrogatories,

1st. By pl'ff.—Did you or did you not heretofore give your affidavit in this cause, of which the annexed is a copy, marked (A.), signed Geo. Hancock, and dated 15th and 20th May, 1852?

Ans. to No. 1.—I did.

2d. By plaintiff.—Are or are not the statements contained in said affidavit true? and are you or are you not willing to adopt the same, and make them your deposition herein as far as they go?

Ans. to No. 2.—The statements of said affidavit are true, and I make them my deposition herein as far as they go.

Cross-examination by Def't., per Jos. B. Stewart, Att'y.

1st. State when it was that you had the conversation with Colonel Gilbert C. Russell, when the offer to sell you speak of was made? When did you meet with him?

Ans. to No. 1.—I do not recollect the year or time, but it — when he was in Louisville, endeavoring to effect a sale of his place; and some few months afterwards I was informed that he had disposed of it to Southard.

In answer to the 2d part (of the) question, I answer, that I was in the habit of meeting with Col. Russell in Louisville every few days, and it was at some of these interviews that the offer was made.

Question No. 2, by def't.—Where did you reside in the year 1827, and when did you move to Kentucky?

Ans. to No. 2.—In the year 1827 I resided, I think, in Kentucky, and moved to Kentucky, I think, about twenty-five years since. I married in Kentucky about thirty years since, and after my marriage, and until I moved, I had visited the State of Kentucky every year, and sometimes twice in the year.

Question No. 3, by same.—Was the conversation of which you speak, previously or subsequently to your removal to Kentucky?

Ans. to No. 3.—I have no distinct recollection of the time of the conversation.

Question No. 4, by same.—Do you recollect positively of being in Kentucky in the year 1827?

Ans. to No. 4.—I do.

Question No. 5, by same.—Did you vote at the Presidential in 1828? if so, where and when did you reside at and preceding that election?

Ans. to No. 5.—I have no recollection where I voted in the Presidential election of 1828, or whether I voted at all, or where I resided in 1828 immediately preceding the election.

Question No. 6, by same.—Did not Col. A. R. Woolley marry in the Preston family in the year 1827? and did he not visit your house where you then resided, and sojourn with you for a time? If yea, how long did he sojourn with you?

Ans. to No. 6.—I don't recollect the year of Col. A. R. Woolley's marriage. He never visited my house, but visited my mother's residence in Virginia with his family soon after his marriage, and I don't know how long he sojourned there. I did not, I think, see him there, but if I did, it was for a very short time.

Question No. 7, by same.—Had you or not removed to Kentucky previously to Col. Woolley's marriage?

Ans. to No. 7.—I think I removed to Ky. about the time of his marriage, but don't recollect whether before or after.

Question No. 8, by same.—Did not Gen. Jesup (now Quarter-Master Gen. U. S. A.) spend a portion of the years 1827 and 1828 with you at your residence where you then resided?

Ans. to No. 8.—I think Gen. Jesup and his family spent some portion of the year 1827 with me where I then resided; he spent the summer with me in Virginia, just before I moved from my mother's residence, and the next year, I think, visited me at my residence in Ky.

Question No. 9, by same.—Can you say whether the conversation of which you speak, as having taken place between you and Col. Russell, did take place before or after Gen. Jesup's visit to your house?

Ans. to No. 9.—I cannot recollect the time of the conversation with Col. Russell, or whether it was before or after Gen. Jesup's visit to my house.

Question No. 10, by same.—Did not one Mr. Cook, perhaps William Cook, a Civil Engineer, spend a portion of the year 1828 at your residence? If so, where did you then reside?

Ans. to No. 10.—Mr. Cook and several Engineers, engaged in the survey of canals in Virginia, spent much of their time with me while I resided in Virginia, but I don't recollect in what year.

Question No. 11, by same.—How often did you meet Col. Russell in Kentucky? Did you meet him here more than once on the visits of which you have previously spoken?

Answer to No. 11.—I have met Colonel Russell in Kentucky on several occasions, perhaps three or four times.

Question to No. 12, by same.—Do you know anything about the character of the conveyance from Colonel Russell to Southard? Did you hear anything spoken of it about the time it was made, by either of the parties or by others? Whether it was an absolute sale or otherwise, and were you in Kentucky at the time of said conveyance?

Answer to No. 12.—I know nothing of the character of the conveyance from Russell to Southard only from hearsay. I don't remember whether I was in Kentucky at the time it was made or not. I never saw any of the contracts or papers between them.

Question No. 13, by same.—State when it was you had the conversation with Colonel Taylor, the father of the late General Zachary Taylor, when he spoke of the place being sickly? was it when Russell owned it, or when Floyd or Breckenridge owned it? Do you know *when* Col. Russell bought the place from Floyd?

Answer to No. 13.—The conversation with Colonel Taylor, I think, was about the time Floyd got it from Breckenridge, when it was understood Floyd wished to sell it. I don't recollect the date, neither do I know the date of Floyd's sale to Russell.

Question No. 14, by same.—Were you not acquainted with James Southard, deceased? If so, what was his character as a business transactor? was he considered a fair man, or one who sought to take advantage in his dealings? and was he not a man who had the reputation of being a usurer, and who aimed to invest, and whose habit was to invest his means at a usurious rate of interest? State fully all that you know or have heard in this respect.

Answer to No. 14.—I was acquainted with the late James Southard slightly; have never had any pecuniary transaction with him that I remember. He had the character of being a money-lender for usury.

Question No. 15, by same.—Are you not acquainted with the general moral character of Daniel R. Southard for truth and veracity? Would you, from all you have heard, if anything, be willing to believe his oath if he had a large interest at stake?

Answer to No. 15.—Personally I have never had any transaction with Daniel R. Southard, and know nothing of his character. I have heard others speak ill of him; but cannot, from my own knowledge, say that he was not entitled to credit on oath.

Question by same, No. 16.—Were you not applied to by one or both of the parties, or their counsel, for a deposition in this cause, previously to the trial in the Court below? If yea, who applied to you and when, and who applied to you for your affidavit previously given in this cause?

Answer to No. 16.—I was applied to by Southard for my deposition in this suit, and Southard also applied to me to call at his lawyer's office and give the affidavits which I gave last. I have no recollection of any application made to me for a deposition in the previous suit, and feel sure there was none.

Questions by Plaintiff, by S. S. Nicholas, Attorney.

Question No. 1, by plaintiff.—Please state what you just now said after reading the last interrogatory of the defendant, as to the manner in which Southard obtained information of what your testimony would be in this cause?

Answer to No. 1.—About a year since, or probably eighteen months, I was speaking in Nock's Apothecary shop of the rise of property, when I remarked that, as an instance, the Southard property, then worth $60 or $70,000, had been offered to me by Colonel Russell for $5,000. A few days afterwards, Southard called on me to know if it had been so offered to me, and told me that he wished to see his lawyer, and would probably want my testimony in some suit about the title of the land. Before that time, I don't think I ever spoke to Southard five minutes on any subject, and the affidavits since given have been given as the result of that conversation.

NOTE.—J. B. Stewart, the attorney for defendant Russell, enters exceptions to the foregoing question of plaintiff, and to the answer of the witness thereto, for causes—

1st. The witness, after stating who applied to him for his deposition, turned to Russell's attorney, and asked him if he wanted him, witness, to tell the circumstances under which he came to speak of what he knew in the cause, and which led Southard to find it out, and detailed the circumstances; to this Mr. Stewart replied he did not; that it was not embraced in the question he had put. Judge Nicholas, for Southard, desired the witness to answer as he had indicated. The matter was submitted to commissioner, who decided that the question went to the person, and that the answer of witness going to the circumstances was outside of the call of the question, and if Southard wanted the circumstances detailed by the witness, he must ask the question to bring them out. Whereupon Judge Nicholas, for Southard, asked the question, and witness gave the answer herein excepted to.

2d. That the question is leading in its form, and suggest the answer wanted.

Question by plaintiff, No. 2.—Are you or are you not acquainted with the character of Gilbert C. Russell, or his general reputation? If yea, is it or is it not that of a swindler, who cheats everybody who trusts him?

Defendant excepts to this question.

Answer to No. 2.—I never had any pecuniary transactions with him. I have always considered him an improvident, reckless man in his business transactions; but have never heard anything to the prejudice of his character.

Question No. 3, by plaintiff.—Are you or are you not acquainted with his character for veracity? And would you or would you not believe his oath when it went to put forty or fifty thousand dollars in his pocket?

Answer to No. 3.—I cannot say that I am well enough acquainted with him to express an opinion as to his veracity, and could not say that I would not believe him on oath.

Question No. 4, by same.—Are you or not acquainted with the reputation for moral character of Joseph B. Stewart, attorney for Russell in this case? if so, would you or not believe him capable of bribing a witness to obtain a decree, which would be worth to him personally twenty thousand dollars?

Answer to question No. 4.—Of Mr. Stewart I know nothing whatever, having only known him as a resident, by sight, in Louisville some years past, and never have had any transaction with him of any kind, and know nothing of his standing here or elsewhere. And further saith not.

GEO. HANCOCK.

UNITED STATES OF AMERICA,
State of Kentucky, Jefferson County, City of Louisville, sct.

I, William S. Pilcher, of the United States, 8th Circuit and Kentucky District, a commissioner of affidavits, bail, &c., certify that the foregoing eleven pages (including the affidavit annexed and made part thereof), the deposition of George Hancock, was taken, subscribed and sworn to before me, at the time and place mentioned in the caption of said deposition, by consent therein stated. That so much of the examination in chief of said witness as is contained on the first page, was reduced to writing by me in presence of said witness, and carefully read to him by me, and so much of the deposition and thence follows was made by questions written down by me, dictated by the attorneys of each party present respectively, and the answers thereto of the witness written down by the witness in my presence. I further certify, that S. S. Nicholas was present, and asked the questions as attorney for Southard, and J. B. Stewart was present and asked the questions as attorney for Russell, and took the exceptions as written down by me, in the body of the deposition to the question put, and the answer given by the witness, which is also reported.

I further certify, that I am not of kin to nor of counsel for either party, and have no interest in the event of this suit.

In witness whereof, I have hereto set my hand, this 11th day of December, 1852. This certificate not affixed, waiting the taking of more depositions.

WM. S. PILCHER,
Commissioner, U. S., 8th Circuit, Kentucky District.

Interrogatories.

UNITED STATES OF AMERICA,
8th Circuit and Kentucky District.

DANIEL R. SOUTHARD, &c.,
vs.
GILBERT C. RUSSELL.

Additional interrogatories filed to be answered by George Hancock.

1st. State any additional facts or circumstances that go to confirm your recollection, as to the time when you had the conversation with Russell, in which you state in your deposition he offered to sell you the farm in contest for $5000, or if such be the fact, which will place the conversation at a different time from what you have heretofore stated.

2d. Do you know any other matter or thing, which you think may be material for the defendants.

S. S. NICHOLAS,
Attorney for Southard.

I acknowledge service of this 5th April, 1852.

B. MONROE,
For Russell, &c.

A true Copy. Attest,
JOHN A. MONROE,
C. C. C. K. D.

Geo. Hancock's Deposition.

Deposition of George Hancock.

The deposition of George Hancock, taken before William A. Hauser, by agreement of the parties attached to the commission on the interrogatories thereto annexed and herein transcribed, and for the purpose of being read in the suit of D. R. Southard, &c., against Gilbert C. Russell, now in the Circuit Court of the United States, for the 8th Circuit and District of Kentucky, the commission being hereto attached, on the 28th day of April, 1853, at the office of Pilcher and Hauser, in the city of Louisville, Kentucky. The deponent being of lawful age, personally known to the undersigned, and first solemnly sworn, and cautioned to state the whole truth, and to make true and perfect answers to the several interrogatories propounded to him in this case, and having been duly examined, deposes and states in answer to

Interrogatory No. 1.—State any additional facts or circumstances, that go to confirm your recollection as to the time when you had the conversation with Russell, in which you state in your deposition, he offered to sell you the farm in contest for $5000, or if such be the facts, which will place the conversation at a different time from what you have heretofore stated.

Answer.—Having heretofore given my deposition, and having been asked when I moved to Kentucky, and where I resided in 1827 and 1828, and from the unexpected interrogatories not being able to answer them certainly at that time, I now correct my former evidence by saying, that prior to 1826, I owned a farm in Virginia, on which I resided with my mother, who had a dower estate in it, including the mansion. That I came to Kentucky in the fall of 1826, and remained most of that fall and winter in the vicinity of Louisville, or in it. That in April, 1827, whilst there I purchased from William Croghan, the Locust Grove place, 6 miles above Louisville, with all the stock upon it, having on it my wife's portion of the slaves devised to her by her father.

That I remained in Kentucky, visiting various portions of it, until the summer of that year, I returned to Virginia, and reached there about the 17th July. That it took me some ten or twelve days to make the journey from Kentucky.

That I remained in Va., at my mother's, most of the summer and fall of 1827. That in November of that year, I moved out from that State a portion of my negroes; and remained in Kentucky until the spring or summer of the following year, when I returned to Virginia, and in the fall of 1828 removed another portion of my negroes to Kentucky, my mother remaining until the year 1829 or 1830, when she moved out to my residence in Kentucky.

If my recollection serves me properly, I saw Col. Russell in Kentucky frequently during my visit to Kentucky during the spring and summer of 1827, and believe it was then that he made the proposition to sell. But of this I am by no means certain after so great a lapse of time; it might have been several months earlier. I have no means of identifying the time better than I have here stated.

Interrogatory No. 2.—Do you know any other matter or thing, which you think may be material for the defendants?

Answer.—I know nothing.

GEO. HANCOCK.

State of Kentucky,
City of Louisville.

I, William A. Hauser, authorized by the annexed commission and agreement, certify that the above-named witness was by me first duly sworn, cautioned and examined, did, at the same time and place stated in the caption, depose and give the above answers, and no more, to the several interrogatories so propounded to him, and that the evidence so given was wholly reduced to writing by the witness in my presence, and was subscribed by him in my presence. And that I am not akin to or counsel of either of the parties, or in any way interested in the controversy. Given under my hand and seal, this 28th day of April, 1853.

WM. A. HAUSER,
Commissioner. [L. S.]

James C. Johnston's Deposition.

Deposition of James C. Johnston.

The deposition of Dr. James C. Johnston, taken on the part of D. R. Southard, and others, in the case of D. R. Southard and others, against Gilbert C. Russell, in the Court of the (8th Circuit and Kentucky District) United States, taken before me, William S. Pilcher, commissioner, in and for said Circuit and District, residing in Louisville, this 17th day of July, 1852. The deponent, being of lawful age, first duly cautioned and sworn, deposeth and saith, in answer to questions propounded by the parties, by S. S. Nicholas and W. T. Haggin, counsel for plaintiff, and Charles S. Morehead and J. B. Stewart, for defendant, the same being also taken on the notice herewith filed.—To the taking of which deposition, the counsel for the defendant, Russell, objects, but not on the ground of any defect of notice, or day of taking this deposition under the same.—The said deposition was taken at my office, in the City of Louisville, on said day.

Said witness doth depose and say.

Question 1, by plaintiff's counsel.—Did you or did you not heretofore give your affidavit in favor of complainants herein? If so, please set out a copy of that affidavit.

Ans'r.—I did, and the copy I file herewith, as part hereof, marked *Affidavit*, and my usual signature written across the face thereof, date, 17th July, 1852, is a true copy, that is, a substantial copy of my said affidavit, and I adopt said copy and make it part of this my deposition.

The counsel for def't, Russell, hereby waives any objection that might be taken to said copy of said affidavit, being in the handwriting of S. S. Nicholas, counsel for Southard and others.

Question No. 2, by compl'ts.—Was or was not def't, Russell, present at the conversation with Southard (detailed by you in your deposition given in the case of G. C. Russell *vs.* Daniel R. Southard, and others)?

Ans'r.—I will answer this question by stating the facts as they occurred at the time. I met Mr. James Southard on the street, when I inquired of him as to the rumor I had heard, of the purchase of Col. Russell's farm by him. He, Southard, then mentioned the terms, and as Southard's demand ag'st me, as surety for Thomas Berry, was part of the consideration, and as Col. Russell was a stranger to me, I remarked to Mr. Southard that I was apprehensive Col. Russell would press the debt ag'st me for payment; Mr. Southard then replied, that at all events, I would have four months to arrange the payment, as Russell would have that time, by their agreement, to repay the money, and take back his farm. Mr. Southard then proposed that we should call on Col. Russell, that he would introduce me, and that I might make some arrangement with Col. Russell, relative to the debt ag'st me. We went to the hotel where Col. Russell stopped, and went into his room, and there Russell, Southard, and myself had a conversation on the subject of the claim ag'st me, and all things were arranged with the parties to my satisfaction. At this interview, Mr. Southard and Col. Russell asked me to witness the agreement, so often referred to in my answers to interrogatories, in my former deposition in this case. The only conversation I ever had with Mr. Southard and Col. Russell, on the subject of the sale or purchase of Russell's farm, was the one now detailed by me, and when I was asked to witness the agreement they both told me that it contained the terms of their contract.

Question No. 3.—Did or did not the statements of Southard, in the presence of Russell, as to the agreement, correspond with what he had told you in the street?

Ans'r.—In my former deposition I have stated, and have stated here, that Southard told me in the street that Russell had the power or the right to repay the money in four months, and take back his farm. And this they both stated to me when I witnessed their agreement, and I heard no difference and disagreement between Russell and Southard as to the contract.

Cross-examination.

Question by def't.—By counsel, C. S. Morehead, &c.

No. 1.—Have you or have you not read the opinion of the Supreme Court of the United States, in the case of Russell *vs.* Southard, &c.?

Ans'r.—I have read my deposition and the opinion of the Court, or so much of the opinion of the Supreme Court of the United States as relates to that deposition, before I gave my affidavit.

Question No. 2.—In looking at your deposition in the original suit, is there anything in it that is not strictly and accurately correct?

Ans'r.—Nothing, except in the last sentence of my answer to the 3d interrogatory, where I say, "My understanding of the contract "was, both from Russell and Southard, and my distinct impression "is, that Russell was to pay the money in four months, and take "back his farm," if this expression implies, that Russell was compelled to pay the money, it implies more than I intended.—And all that I knew I have stated, which was, that he had the right or the power, if he so chose, to repay to Southard the $5000 in four months, and take back his farm.

Question No. 3.—Did the parties, in your presence, say anything to the effect of your last answer, that is, that it was not obligatory on Russell to pay the money in four months?

Answer.—Neither Southard or Russell said that it was obligatory, or said anything about it in my presence, whether obligatory or not.

Question No. 4.—When you say, in your affidavit annexed to this deposition, that it was not your intention to convey the idea that Russell was in any way bound to refund the money, unless he chose to do so, was that from what the parties told you, or your inference from the agreement itself?

Answer.—Knowing that the memory, especially for so long a period back, might be treacherous, I have, in all my answers, scrupulously referred to the agreement between the parties, and should now answer that question, that I may have inferred it from said agreement.

Question No. 5.—Did or did not Daniel R. Southard call on you after the filing of Russell's bill in the original cause, and interrogate you as to your understanding of the contract between James Southard and Russell, and did he or not endeavor, at that time, to make any impression on your mind contrary to your understanding of said contract? If yea, when and how often did he call, and what was the purport of these conversations?

Ans.—I had two conversations with Mr. Southard after the filing of Russell's bill, one at my house and one in the street, in both of which I told Mr. Southard that the contract or agreement between his brother, James Southard, and Colonel Russell contained all or most that I knew on the subject. And that agreement I had recently read in the court-house, being filed in the suit of Southard against some Insurance office in the city, for the loss by fire of the house on said farm. I do not recollect that Southard endeavored to make any impression on my mind contrary to said agreement, for it was matter of record, and spoke for itself; the expression in my affidavit, that I had no conversation with Mr. Daniel Southard before the taking of my deposition, is incorrect, and is hereby stricken out. And further this deponent saith not.

J. C. JOHNSTON.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, sct.

I, William S. Pilcher, Commissioner for Affidavits, &c., in and for the said circuit and district, residing in the city of Louisville, certify that the foregoing deposition of James C. Johnston was taken, sworn to, and subscribed before me, at the time and place, and under the circumstances mentioned in the caption thereof. That I wrote down the questions as dictated by the counsel of the parties respectively, and in the presence of the witness also, wrote his answer to the first question, and afterwards said witness, in my presence, wrote his answers to the other questions in my presence. That two lines of the answer to question five, written by the witness too near to the margin where page 4 joins page 5, I copied those lines on the margin of page 5 to make them visible; but, if necessary, part the margin of page 4 from page 5, and read the original lines in the handwriting of the witness. The waivers and agreements of the parties were made in my presence, as stated in this deposition.

I further certify, that I am not of kin or counsel for either of the parties, nor interested directly or indirectly in the event of this suit.

Given under my hand, at my office, in the city of Louisville, July 17th, 1852.

WM. S. PILCHER.
United States Com'r Aff'dvts., &c., 8th C., K. D.

Affidavit of J. C. Johnston.

Affidavit of James C. Johnston, part of his deposition.

I, James C. Johnston, state that in my deposition, taken in the suit in this Court, Russell *vs.* Southard, &c., it was not my intention to convey the idea that, from my recollection and understanding from Russell and James Southard, he, Russell, was in any way bound to pay back the $5000 paid by Southard; but that it was only a privilege which he retained to himself to pay back the amount in four months, if he thought proper to do so, and get back the farm. It was not my intention to convey the idea that Russell was in any way bound to refund the money unless he chose to do so. On the contrary, it has always been, and is now my clear understanding of the agreement, from what they told me, that it was Russell's privilege to make Southard retain the farm at the price he had paid, or by paying back in four months to cancel the sale. I read the written agreement when I gave my deposition, and have just now again read it; both then and now I understand such to be its purport, and neither then or now have found any difference between it and what my recollection tells me was the substance of the conversation with the parties when I attested the agreement. I think that if I had found any difference between it and my recollection I would certainly have pointed it out in my deposition, My impression is, that finding them to agree, I expressly incorporated the written agreement with my deposition, for fear that any misstatement of mine, as to my recollection of what passed, might prejudice either of the parties. Understanding that the Court has put a different interpretation on my deposition, I am bound to presume that the language used by me is not as clear and unambiguous as it ought to have been, and I can but express my deep regret that either party should have been prejudiced by such unintentional ambiguity.

I have no recollection that Southard, or either of the defendants, or their attorneys, had any conversation with me about my testimony, either before or after my deposition was given, until after I had heard of the decision in the Supreme Court, when S. S. Nicholas applied to me to know what I had meant, and I told him in substance what is herein stated. My recollection is that when Mr. Stewart, the attorney of Russell, applied to me for my deposition, I refused to give it, until the written agreement was produced, so that I might compare my recollection therewith, and if they agreed, that I might make it the basis of my testimony.

J. C. J.

Defendant's Depositions.

The following are the depositions and documents read on the part of the defendant.

Interrogatories.

UNITED STATES CIRCUIT COURT,
Kentucky District.

GILBERT C. RUSSELL,
ads.
DANIEL R. SOUTHARD and others.
} On Bill of Review, in Equity.

Interrogatories to North and Small.

Interrogatories to take the deposition of Messrs. North and Small, to be read as evidence, on the part of said Russell, at the trial of the above cause.

Int'y No. 1.—Did or did not David F. Clark and Willett J. Clark, one or both of them, call at your store to see the son of Dr. Peter Wood? If yea, please say what object they had in view? was it or was it not to, through him, negotiate for a certain note? State how often they, or either of them, called.

Int'y No. 2.—Are you or are you not acquainted with young Alvin Wood, the son of Dr. Peter Wood? If yea, state what have been your opportunities of knowing him well, and say whether or not you consider him a young man of correct morals and integrity. Do you or not consider him entitled to implicit belief in what he would swear to?

Int'y No. 3.—Do you know or can you state any other matter or thing that could be of service to the parties complainant and defendant, or either of them? If you please, declare the same as fully and at large in your answer as though you were particularly interrogated thereto.

MOREHEAD, MONROE, & STEWART,
For Russell.

Interrogatories to J. F. Speed, &c.

Interrogatories to take the deposition of Joshua F. Speed and others, to be read as evidence on the part of Russell, at the trial of the above-named cause.

Interrogatory No. 1.—State what is the condition of the farm in Jefferson County, lately occupied by D. R. Southard, as regards its condition for cultivation; what sort of fencing is there upon it? Judging from appearances, when do you suppose the fencing was put upon it?

Interrogatory No. 2.—How long have you known said farm? Did you or did you not know it when it was owned by Gov. Floyd? State how the improvements on it now compare with what they were then, if you remember them?

Interrogatory No. 3.—Did or did not D. R. Southard, or his brother James, deceased, ever put any improvements on the place? If yea, please name them.

Interrogatory No. 4.—Do you know, or can you state any other matters or thing, over and above what you have stated, which could be of benefit to the parties complainant or defendant, or either of them? If yea, please declare the same fully and at large, as though you were particularly interrogated thereto.

MONROE, MOREHEAD, & STEWART,
For Russell.

Interrogatories to Charles J. Clark, &c.

Interrogatories to take the deposition of Charles J. Clark and

to make Southard retain the farm at the price he had paid, or by paying back in four months to cancel the sale. I read the written agreement when I gave my deposition, and have just now again read it; both then and now I understand such to be its purport, and neither then or now have found any difference between it and what my recollection tells me was the substance of the conversation with the parties when I attested the agreement. I think that if I had found any difference between it and my recollection I would certainly have pointed it out in my deposition. My impression is, that finding them to agree, I expressly incorporated the written agreement with my deposition, for fear that any misstatement of mine, as to my recollection of what passed, might prejudice either of the parties. Understanding that the Court has put a different interpretation on my deposition, I am bound to presume that the language used by me is not as clear and unambiguous as it ought to have been, and I can but express my deep regret that either party should have been prejudiced by such unintentional ambiguity.

I have no recollection that Southard, or either of the defendants, or their attorneys, had any conversation with me about my testimony, either before or after my deposition was given, until after I had heard of the decision in the Supreme Court, when S. S. Nicholas applied to me to know what I had meant, and I told him in substance what is herein stated. My recollection is that when Mr. Stewart, the attorney of Russell, applied to me for my deposition, I refused to give it, until the written agreement was produced, so that I might compare my recollection therewith, and if they agreed, that I might make it the basis of my testimony.

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Int'y No. 2.—Are you or are you not acquainted with young Alvin Wood, the son of Dr. Peter Wood? If yea, state what have been your opportunities of knowing him well, and say whether or not you consider him a young man of correct morals and integrity. Do you or not consider him entitled to implicit belief in what he would swear to?

Int'y No. 3.—Do you know or can you state any other matter or thing that could be of service to the parties complainant and defendant, or either of them? If you please, declare the same as fully and at large in your answer as though you were particularly interrogated thereto.

MOREHEAD, MONROE, & STEWART,
For Russell.

Interrogatories to J. F. Speed, &c.

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Interrogatory No. 2.—How long have you known said farm? Did you or did you not know it when it was owned by Gov. Floyd? State how the improvements on it now compare with what they were then, if you remember them?

Interrogatory No. 3.—Did or did not D. R. Southard, or his brother James, deceased, ever put any improvements on the place? If yea, please name them.

Interrogatory No. 4.—Do you know, or can you state any other matters or thing, over and above what you have stated, which could be of benefit to the parties complainant or defendant, or either of them? If yea, please declare the same fully and at large, as though you were particularly interrogated thereto.

MONROE, MOREHEAD, & STEWART,
For Russell.

Interrogatories to Charles J. Clark, &c.

Interrogatories to take the deposition of Charles J. Clark and

to make Southard retain the farm at the price he had paid, or by paying back in four months to cancel the sale. I read the written agreement when I gave my deposition, and have just now again read it; both then and now I understand such to be its purport, and neither then or now have found any difference between it and what my recollection tells me was the substance of the conversation with the parties when I attested the agreement. I think that if I had found any difference between it and my recollection I would certainly have pointed it out in my deposition. My impression is, that finding them to agree, I expressly incorporated the written agreement with my deposition, for fear that any misstatement of mine, as to my recollection of what passed, might prejudice either of the parties. Understanding that the Court has put a different interpretation on my deposition, I am bound to presume that the language used by me is not as clear and unambiguous as it ought to have been, and I can but express my deep regret that either party should have been prejudiced by such unintentional ambiguity.

I have no recollection that Southard, or either of the defendants, or their attorneys, had any conversation with me about my testimony, either before or after my deposition was given, until after I had heard of the decision in the Supreme Court, when S. S. Nicholas applied to me to know what I had meant, and I told him in substance what is herein stated. My recollection is that when Mr. Stewart, the attorney of Russell, applied to me for my deposition, I refused to give it, until the written agreement was produced, so that I might compare my recollection therewith, and if they agreed, that I might make it the basis of my testimony.

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UNITED STATES CIRCUIT COURT,
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DANIEL R. SOUTHARD and others.
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Int'y No. 2.—Are you or are you not acquainted with young Alvin Wood, the son of Dr. Peter Wood? If yea, state what have been your opportunities of knowing him well, and say whether or not you consider him a young man of correct morals and integrity. Do you or not consider him entitled to implicit belief in what he would swear to?

Int'y No. 3.—Do you know or can you state any other matter or thing that could be of service to the parties complainant and defendant, or either of them? If you please, declare the same as fully and at large in your answer as though you were particularly interrogated thereto.

MOREHEAD, MONROE, & STEWART,
For Russell.

Interrogatories to J. F. Speed, &c.

Interrogatories to take the deposition of Joshua F. Speed and others, to be read as evidence on the part of Russell, at the trial of the above-named cause.

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Interrogatory No. 2.—How long have you known said farm? Did you or did you not know it when it was owned by Gov. Floyd? State how the improvements on it now compare with what they were then, if you remember them?

Interrogatory No. 3.—Did or did not D. R. Southard, or his brother James, deceased, ever put any improvements on the place? If yea, please name them.

Interrogatory No. 4.—Do you know, or can you state any other matters or thing, over and above what you have stated, which could be of benefit to the parties complainant or defendant, or either of them? If yea, please declare the same fully and at large, as though you were particularly interrogated thereto.

MONROE, MOREHEAD, & STEWART,
For Russell.

Interrogatories to Charles J. Clark, &c.

Interrogatories to take the deposition of Charles J. Clark and

2d. Did you, or did you not, also press Wood to admit that the conveyance of 1827, from Russell to Southard, was in fact intended to be a sale, and what response did said Wood make, and why did you not state that his response also?

Inty. No. 5.—At whose instance, supervision, or suggestion, was the matter to be stated or omitted in your said affidavit pointed out or arranged, and was there, or not, any reason assigned to you why such plan should be observed?

Inty. No. 6.—Did, or did not, said Southard importune you to serve him further in this matter, after he had made his application for a review? Did he, or did he not, express himself as being solely dependent for his success upon the exertions of yourself and R. F. Baird, Esq.? State fully how he talked and acted, and expressed himself towards you, and in your presence after the time alluded to.

Inty. No. 7.—Do you, or do you not, know Daniel S. Rapelge? State what participation, if any, he bore in the interrogation of Wood? Is he or not a nephew of Southard's, and has he or has he not been very active in trying to benefit Southard in the way of providing testimony, and has he or has he not tried to influence you and others, not to testify now, nor to give affidavits heretofore in favor of Russell? Has he or has he not stated to you, that if you would not testify in favor of Russell that his uncle (Southard), would compensate you well for what you had done for him? Please describe said Rapalge's conduct and conversation fully in this respect?

Inty. No. 8.—Did or did not one Samuel K. Page make a proposition to you, to give or to furnish testimony for the benefit of Southard on his application for a review; and was there or was there not any effort made on the part of said Page to bias your mind? If yea, please state when it was and all about it, how the proposition, if any, was made and how treated?

Inty. No. 9.—Do you or do you not know the character and standing of said S. K. Page in this community, for honesty and integrity, and is he or is he not now indicted for a felony of a grave and serious character, in the Jefferson Circuit Court?

Inty. No. 10.—How long was the scheme of interrogation practised upon Wood, previous to yourself and the others engaged therein giving your affidavits? At what time and house did you generally meet, by day or by night?

Inty. No. 11.—Did or did not said Wood ever seem to apprehend or expect what your motive was during all this time, entertainment and interrogation?

Do you know or can you state any other matter or thing, over and above what you have been interrogated unto? If yea, please declare the same fully and at large in your answer, as though you were particularly interrogated thereto.

MONROE, MOREHEAD, & STEWART.
For Russell.

Interrogatories to C. W. Logan and Others.

Interrogatories to take the depositions of Caleb W. Logan and others, to be read as evidence on the part of Russell at the trial of the above cause.

Inty. No. 1.—Did you or did you not know of the suit lately pending in the United States Circuit Court for the District of Kentucky, between Col. Gilbert C. Russell and Daniel R. Southard and others, for the recovery of the farm, then occupied by the said Southard, and did you or not know it about the time the suit was commenced?

Inty. No. 2.—Did you or did you not hear it often stated, and was it or not a matter of general notoriety as to the terms upon which said Russell had employed his counsel, and was it or was it not a matter of undoubted publicity that they were to receive a sum equal to one half of the value of the property, if they succeeded? And do you or do you not consider that it was a matter too generally known for either said Southard or his counsel to be ignorant thereof?

Inty. No. 3.—Do you know or can you state anything over and above what you have stated, which could be of benefit to the parties complainant or defendant, or either of them? If yea, please declare the same fully and at large, as though you have been particularly interrogated thereto?

MOREHEAD, MONROE & STEWART.
For Russell.

Cross-interrogatories.

Circuit Court of the United States, in and for the District of Kentucky.

Daniel R. Southard and others, Complainants, *against* Gilbert C. Russell, Defendant.	}	On Bill of Review.

Cross-interrogatories to Alvin Wood, &c.

Cross-interrogatories by complainant to defendant's interrogatories for Alvin Wood and others.

Cross-Inty. to Inty. No. 1.—What was the date of the note spoken of in the said interrogatory, and in your answer thereto?

2d. What was the amount of said note?

3d. By whom was it executed or signed, and to whom was it payable, and when was it payable?

4th. Where is said note? what did you do with it?

5th. Have you ever demanded payment of it, and of whom did you demand payment?

6th. Has Joseph B. Stewart, the maker of said note, ever complained to you for having spoken about said note?

7th. Did said Stewart say that if you or your father had not talked about the note, that it would have been paid already?

Cross-interrogatories to North and Small and others.

Cross-Intys. by same to defts. Intys. to North and Small and others.

1st. Describe the note alluded to in Inty. No. 1, and your answer thereto; give its date, amount, when and to whom payable, and by whom executed?

2d. Was payment demanded of said note, and of whom was it demanded?

3d. Who had said note, or where is it now?

4th. Have you been required, and by whom, to say nothing about said note?

5th. Have you been requested not to give your deposition in behalf of Southard, and especially to anything further calculated to give publicity to the note, and by whom was such request made?

6th. Did you hear Wood complain that Jo. B. Stewart had not paid him?

7th. State anything further in your knowledge beneficial to complainants?

Cross-interrogatories for Caleb W. Logan, &c.

Cross-Intys. by same to Intys. for Caleb W. Logan, and others.

1st. Did you not understand that the arrangement between Russell and his counsel was contrived and designed so as to evade the law against champerty?

2d. Did you not understand that said suit of Russell agst. Southard and others, was to be carried on, and was carried on by Russell's counsel, at the cost and expense of said counsel, and that his remuneration was to come out of the property sued for?

3d. Have you not heard Jos. B. Stewart, counsel for Russell in said suit, while it was pending, speak of his expectation to own a portion of the property in controversy?

4th. Have you not heard said Stewart speak of the great outlay and expense he was put to in the conduct and prosecution of said suit?

5th. Do you know that the original agreement, under which said suit was instituted, was that Russell was to give his counsel one-half of the property sued for?

6th. State anything you know tending to show that the agreement between Russell and his counsel was, in fact or spirit, in violation of the law against champerty and maintainance.

NICHOLAS, HAGGIN & HARRIS,
Atty's. for SOUTHARD.

A Copy. Attest,
JNO. A. MONROE,
C. C. C. K. D.

Deposition of Alvin Wood.

Deposition of Alvin Wood.

The deposition of Alvin Wood, taken to be read on the part of Gilbert C. Russell *ads.* Daniel R. Southard, and others, on Bill of Review now pending in the Circuit Court of the United States for the 8th Circuit and District of Kentucky, by authority of the annexed commission, and on the interrogatories thereto attached and herein described, on the 17th February, 1853, at the office of W. S. Pilcher, in the City of Louisville, State of Kentucky. The deponent, being of lawful age, and personally known to the undersigned, and solemnly sworn and cautioned to state the whole truth, and to make true and perfect answers to the several interrogatories propounded to him, and having been duly examined by the undersigned, doth depose and say in answer to

Int'y. No. 1.—Did or did not David F. Clark and Willett J. Clark both apply to you for a certain note, held by your father? If yea, please state when it was, and how often they both or either of them called, and what was said between you and them on the subject?

Ans'r.—David F. Clark applied to me to see a note held by my father, Peter Wood, on Jos. B. Stewart. D. F. Clark spoke to me once about the note, and afterwards he called on me to see it. It was between the first of Jan'y. and the middle of April, 1852, to the best of my recollection. When D. F. Clark called on me to see the note, he said that his brother Willard wanted to buy it; that his said brother knew where he could make the money. He went on to say that his brother Willard had bought a claim from Stilwell & Alexander, or from one of that firm. He said that his brother had money, and had bought that claim.

Int'y. No. 2.—Do you know, or can you state, any matter or thing which may be of service to the parties, compl'ts. or defendants, or either of them, over and above what you have been interrogated unto? If yea, please declare the same fully and at large in your answer, as though you were particularly interrogated thereto?

Ans'r.—I know nothing further that I know to be material to either party, unless suggestions are made to me. At the suggestion of Russell's att'y., I say, that I made no concealment of the note, but showed it to any one and everybody who applied to see it.

Cross-interrogatories.

Cross-int'y. No. 1.—What was the date of the note spoken of in the interrogatory and answer thereto?

Ans'r.—The note was dated April, 1849. I do not remember the exact day of the month; along about the middle of it, perhaps the 18th day of April, as well as I remember.

Cross-int'y. No. 2.—What was the amount of the note?

Ans'r.—Two hundred and eighty dollars.

Cross-int'y. No. 3.—By whom was it executed and signed, and to whom was it payable?

Ans'r.—The note was signed to Joseph B. Stewart, and was made payable to my father, Peter Wood. I don't recollect when it was payable, but it was past due when I had it in my possession.

The 4th, 5th, 6th, and 7th cross-interrogatories waived by S. S. Nicholas, Southard's att'y.

And further sayeth not.

ALVIN WOOD.

Deposition of Charles J. Clark.

Deposition of Charles J. Clark.

Also the deposition of Charles J. Clark, taken at the same time and place, to be used on the same behalf, in the same suit. Deponent of lawful age, personally known to the undersigned, and solemnly cautioned and sworn to speak the truth, and to make true and perfect answers to the questions propounded to him, doth depose and say in answer to

Int'y. No. 1.—Are you or are you not acquainted with the handwriting of William D. Payne, dec'd? If yea, please examine the writing now shown you, and say whether it is all his writing?

Ans'r.—I am acquainted with the handwriting of William D. Payne, dec'd. I have frequently seen him write. I am Clerk of the Louisville Chancery Court. I employed him in my office to make out records for the Court of Appeals. I have examined the writing now shown me, marked with *C. J. C.*, the initials of my name, dated 16th Jan., 1828, and signed W. D. Payne, purporting to be an extract of a letter from G. C. Russell to J. W. Wing, Esq. The body of this paper I believe to be in the handwriting of W. D. Payne, and that his signature thereto is genuine, with the exception of an altered word on the face of the paper, which alteration I don't know who made.

Int'y. No. 2.—Examine the letters filling out the word *purchase* after the syllable *re*, and say whether or not those letters and that word were written by W. D. Payne.

Ans'r.—I have examined the word and the letters; I do not think they are in Payne's handwriting; the letters appear to be made in a different ink; the "p" bears some resemblance to Payne's "p's," but the balance of the letters I believe dissimilar to those of Payne.

Int'y. No. 3.—Look closely at the word *repurchase* as it stands, and say whether you can perceive that it is or not the word *redeem* changed into *repurchase?*

Ans'r.—I have examined the word carefully, and it appears to me to be written over the letters *deem;* the "d" is more obscured by the letter "p," and is less distinct than the balance, as they appear to me.

Int'y. No. 4.—Do you know or can you say anything which could be of benefit to the parties, compl'ts. or defendants, or either of them, over and above what you have stated? If yea, please declare the same fully and at large in your answer, as though you were particularly interrogated thereto.

Ans'r.—I know nothing personal of the controversy, and therefore I am not aware that I know anything further material. And further sayeth not.

CH. J. CLARKE.

Deposition of Thos. P. Smith.

Also the deposition of Thomas P. Smith, taken at the same time and place, to be read on the same behalf, in the same suit, on the same interrogatories and commission as those propounded to C. J. Clark, being of lawful age, known personally to the undersigned, and solemnly cautioned and sworn, doth depose and say in answer to

Int'y No. 1.—In answer, I say I am acquainted well with W. D. Payne's handwriting. I have had a number of business transactions with him in my office as Master in Ch'y of the Louisville Ch'y Court, and I have seen him write very often. I have examined the paper marked *C. J. C.*, alluded to in Charles J. Clark's deposition. All of the writing in that paper is in W. D. Payne's handwriting, except *purchase* in the 4th line from the top; the letters of the said word *purchase* have been written on the word which I take to be *deem*, so as to make that word read *repurchase* instead of *redeem.*

Ans'r to Int'y No. 2.—I have examined said word. The original word *redeem* was written by W. D. Payne, as I have no doubt the letters *purchase* are written in a heavier hand than his, and in a different ink, and do not resemble the handwriting of Mr. Payne, and

Ans'r.—I know nothing further that I know to be material to either party, unless suggestions are made to me. At the suggestion of Russell's att'y., I say, that I made no concealment of the note, but showed it to any one and everybody who applied to see it.

Cross-interrogatories.

Cross-int'y. No. 1.—What was the date of the note spoken of in the interrogatory and answer thereto?

Ans'r.—The note was dated April, 1849. I do not remember the exact day of the month; along about the middle of it, perhaps the 18th day of April, as well as I remember.

Cross-int'y. No. 2.—What was the amount of the note?

Ans'r.—Two hundred and eighty dollars.

Cross-int'y. No. 3.—By whom was it executed and signed, and to whom was it payable?

Ans'r.—The note was signed to Joseph B. Stewart, and was made payable to my father, Peter Wood. I don't recollect when it was payable, but it was past due when I had it in my possession.

The 4th, 5th, 6th, and 7th cross-interrogatories waived by S. S. Nicholas, Southard's att'y.

And further sayeth not.

ALVIN WOOD.

Deposition of Charles J. Clark.

Deposition of Charles J. Clark.

Also the deposition of Charles J. Clark, taken at the same time and place, to be used on the same behalf, in the same suit. Deponent of lawful age, personally known to the undersigned, and solemnly cautioned and sworn to speak the truth, and to make true and perfect answers to the questions propounded to him, doth depose and say in answer to

Int'y. No. 1.—Are you or are you not acquainted with the handwriting of William D. Payne, dec'd? If yea, please examine the writing now shown you, and say whether it is all his writing?

Ans'r.—I am acquainted with the handwriting of William D. Payne, dec'd. I have frequently seen him write. I am Clerk of the Louisville Chancery Court. I employed him in my office to make out records for the Court of Appeals. I have examined the writing now shown me, marked with *C. J. C.*, the initials of my name, dated 16th Jan., 1828, and signed W. D. Payne, purporting to be an extract of a letter from G. C. Russell to J. W. Wing, Esq. The body of this paper I believe to be in the handwriting of W. D. Payne, and that his signature thereto is genuine, with the exception of an altered word on the face of the paper, which alteration I don't know who made.

Int'y. No. 2.—Examine the letters filling out the word *purchase* after the syllable *re*, and say whether or not those letters and that word were written by W. D. Payne.

Ans'r.—I have examined the word and the letters; I do not think they are in Payne's handwriting; the letters appear to be made in a different ink; the "p" bears some resemblance to Payne's "p's," but the balance of the letters I believe dissimilar to those of Payne.

Int'y. No. 3.—Look closely at the word *repurchase* as it stands, and say whether you can perceive that it is or not the word *redeem* changed into *repurchase?*

Ans'r.—I have examined the word carefully, and it appears to me to be written over the letters *deem;* the "d" is more obscured by the letter "p," and is less distinct than the balance, as they appear to me.

Int'y. No. 4.—Do you know or can you say anything which could be of benefit to the parties, compl'ts. or defendants, or either of them, over and above what you have stated? If yea, please declare the same fully and at large in your answer, as though you were particularly interrogated thereto.

Ans'r.—I know nothing personal of the controversy, and therefore I am not aware that I know anything further material. And further sayeth not.

CH. J. CLARKE.

Deposition of Thos. P. Smith.

Also the deposition of Thomas P. Smith, taken at the same time and place, to be read on the same behalf, in the same suit, on the same interrogatories and commission as those propounded to C. J. Clark, being of lawful age, known personally to the undersigned, and solemnly cautioned and sworn, doth depose and say in answer to

Int'y No. 1.—In answer, I say I am acquainted well with W. D. Payne's handwriting. I have had a number of business transactions with him in my office as Master in Ch'y of the Louisville Ch'y Court, and I have seen him write very often. I have examined the paper marked *C. J. C.*, alluded to in Charles J. Clark's deposition. All of the writing in that paper is in W. D. Payne's handwriting, except *purchase* in the 4th line from the top; the letters of the said word *purchase* have been written on the word which I take to be *deem*, so as to make that word read *repurchase* instead of *redeem.*

Ans'r to Int'y No. 2.—I have examined said word. The original word *redeem* was written by W. D. Payne, as I have no doubt the letters *purchase* are written in a heavier hand than his, and in a different ink, and do not resemble the handwriting of Mr. Payne, and

I do not think these letters were made by him; but by whom I do not know.

Ans'r to Interrogatory No. 3.—I have examined the word *repurchase* particularly, as it stands on said paper. I think I can clearly trace that word, as originally written, to be the word redeem.

Ans'r to Interrogatory No. 4.—I do not know that I know anything more material to either of the parties to this suit. And further sayeth not

THOS. P. SMITH.

Deposition of Edmund P. Pope.

Also the deposition of Edm'd P. Pope, taken at the same place, on the 18th February, 1853, to be read in the same behalf in the same suit, on the same interrogatories and commission. Deponent being of lawful age, personally known to the undersigned, and solemnly cautioned and sworn, doth depose and say, in answer to

Int'y No. 1.—In answer I say, I am well acquainted with the handwriting of W. D. Payne, deceased. I have examined the paper shown to me, marked "Extract of a letter from G. C. Russell to J. W. Wing, Esq., dated Alexandria, 19th Dec'r, 1827," and signed W. D. Payne, 16 Jan'y, 1828. Said paper I know is all in the handwriting of W. D. Payne, with the exception of the words purporting to be *repurchase* and *ill* between the letters G. and C. (the letters standing before the name Russell). I cannot say in whose handwriting said exceptions are; whether in the handwriting of W. D. Payne or not.

Ans'r to Int'y No. 2.—I say this question is answered in the foregoing.

Ans'r to Int'y No. 3.—Said word "repurchase," I believe, is written in the stead of some other word, and the word *purchase* is written in different ink, I believe. I cannot undertake to say what the changed word is, but it seems to me that the word *redeem* was the previous word.

Ans'r to Int'y No. 4.—At the suggestion of Southard's counsel I say, I have repeatedly seen W. D. Payne write. I was Clerk of the Jefferson Circuit Court whilst W. D. Payne was a practising lawyer, and have employed said Payne to write in the Clerk's office of said Court. I think he wrote for me in the years 1840 and 1841. And further sayeth not

EDM'D P. POPE.

Deposition of Elijah C. Clarke.

Also the deposition of Elijah C. Clarke, taken at the same time and place, to be read in the same behalf in the same suit, under the same commission, on the same interrogatories thereto attached, and herein described. Deponent being of lawful age, and first duly cautioned and solemnly sworn, he being personally known to the undersigned, doth depose and say, in answer to

Int'y No. 1. Did you or did you not give an affidavit at the instance of Russell in the above-named cause? If yea, please examine the copy now shown you, and say whether it does or does not contain the truth. Is it or not a correct copy of the original? And do you or not make it a part of your deposition now given? Please endorse your name upon the face of it.

Answer.—I did give an affidavit in the above-named cause at the instance of Russell. I have examined the copy of said affidavit now shown to me, and read over to me by the Commissioner, and say it does contain the truth. It is a correct copy of the original. I do make it part of my deposition now given, and have endorsed my name, Elijah C. Clark, upon the face of it.

Int'y No. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, inclusive, are waived by Russell's attorney to this witness.

Int'y No. 12.—Do you know or can you state anything over and above what you have stated, which could be of benefit to the parties, complainants and defendant, or either of them? If yea, please declare the same fully and at large, as though you had been fully interrogated thereto.

Answer.—I know nothing further that I am aware of.

And further sayeth not

ELIJAH C. CLARK.

Affidavit of Elijah C. Clark, part of his Deposition.

JEFFERSON COUNTY, *sct.*

Personally appeared before me, Elijah C. Clark, who is personally known to me, and being of lawful age, upon oath states, That some weeks since, Daniel R. Southard called at the coffee-house of David F. Clark, in which establishment affiant is barkeeper, and proposed to this affiant to have an interview with Dr. Peter Wood, relative to a deposition which he said said Wood had given in the trial of a suit in the Federal Court between Gilbert C. Russell and himself. And also to see a note which he alleged had been given to said Wood by Joseph B. Stewart, Esq., for $280, and to obtain from said Wood any and all possible admissions relative to the consideration for which said note was given, and relative to his, said Wood's, deposition generally. Which said statements, when so obtained, were to be reduced to an affidavit by this affiant, to be used by him, said Southard, in the Federal Court, on an application for a new trial or Bill of Review, for which service he, said Southard, would amply compensate and pay this affiant. Affiant did not feel disposed to take any steps in the matter; but probably said he would interrogate said Wood relative to said matter, if an opportunity should offer. But no such opportunity did offer, and this affiant asked said Wood no question about the matter. Affiant further states that after this request and proposal of the said Southard to him, that said Wood came into the coffee-house where he is employed in company with several other persons, who, after taking a glass with said Wood, commenced to interrogate him about the deposition and note alluded to. Affiant could not hear all that was said, as he was behind the bar, though he endeavored to do so, as he suspected that the object was to elicit matter to be used as proof upon the application aforesaid, from what Southard had previously said to him, and from what he understood had been said to the other persons in conversation interrogating said Wood at the time. But, as before stated, he could not hear, only sufficient to assure him that such was the subject of the conversation. This conversation took place after night in the coffee-house above-mentioned. The persons present at the conversation before-mentioned, were E. R. Dearing, Willett J. Clark, and a third person not now remembered. And further this affiant saith not,

ELIJAH C. CLARK.

Subscribed and sworn to before me, this 12th of June, 1852.

ROBERT F. BAIRD,
Notary Public, Jeff. Co., Ky.

I, Robert F. Baird, of the City of Louisville, a notary public, duly commissioned, for the County of Jefferson, and State of Kentucky, do certify that Elias R. Dearing, Willett J. Clark, and Elijah C. Clark, known to me personally, appeared and made the foregoing affidavits respectively, and signed and swore to the same. Given under my hand and seal this 12th day of June, 1852.

[L. S.] ROBERT F. BAIRD.

Deposition of Robert F. Baird.

Deposition of Robert F. Baird.

Also the deposition of Robert F. Baird, taken at the same time and place, on the same behalf, in the same suit, under the same commission, and on the interrogatories propounded to Elijah C. Clark. Deponent being of lawful age, personally known to the undersigned, and solemnly cautioned and sworn, doth depose and say in

Answer to Inter'y No. 1.—I did give an affidavit before Esqr. Clements, in the above case, at the instance of Russell's attorney. I say that said affidavit contained the truth. I think the copy now shown to me, and which I have read, and which the commissioner read aloud to me in my hearing, is a true copy of said original affidavit. It is in my language as I dictated it to the justice of the peace. I write my name across the face of it (and make it a part of this, my deposition). *Robert F. Baird.*

Int'y No. 3.—Inter'y No. 2 being waived by Russell's att'y.—Was there or not any pecuniary or remunerative inducements held out to or promised yourself and others (if any there were in connexion with you), to embark in eliciting statements from Dr. Peter Wood? And were or were not said statements, when obtained, to be used as the basis of attack upon said Wood's testimony, given in a former branch of this cause? If such was the fact, then state, 1st. How much, and what amount was yourself and others to have rec'd, and in what way, and by whom were you to have been paid, and when? 2d. Was there any reason suggested for, why the remuneration could not be offered to you directly? and what plan or resource, if any, was proposed or adopted to obviate the difficulty so apprehended? How was it proposed that you should approach Wood, and how did you approach him? 4th. Who interrogated him, and in what manner was it done? 5. Was he or not (Wood) freely plied with liquor, and at whose coffee-house, or coffee-houses, and who paid for the same, or was it paid for? Did any one authorize the buying of the liquor; if so, who?

Ans'r.—There was no pecuniary consideration held out to me. Mr. Southard told me he wanted to employ me as counsel, but we made no arrangements. I know nothing personally of the pecuniary inducements held out to others to embark in eliciting statements from Dr. Peter Wood. I suppose the intent was to use the testimony to attack the statements of the said Wood, as suggested in the question. There was no sum of money offered to me. I was informed by Elias R. Dearing, whom — supposed from circumstances to be acting by the authority of D. R. Southard, that Mr. Southard would give $500 to him, if he would elicit certain facts from Dr. Wood, relative to that note for $280, given by Joseph B. Stewart to said Wood, but that Southard had said he did not know how he could do it consistently, with his position in this case, but he (Dearing) would advise Southard to employ me as counsel in the case, and then any funds which Southard had to use in that way, could be paid to me, as counsel, and that I could dispose of them in a manner satisfactory to Dearing, and others concerned. I told Dearing that I thought that Mr. Southard would not give him the $500 that he spoke of; but I told Dearing, that to accommodate him, I would assist him in eliciting from Dr. Wood the facts referred to. Dearing, myself, and Willett J. Clark did elicit the facts, as stated in my former affidavits. I was not paid. Mr. Southard suggested to me no reason why a remuneration could not be offered directly to me, and suggested no plan personally to me, to obviate the difficulty of a direct offer to me.

There was no plan of approaching Dr. Wood suggested to me; Dearing and myself met Dr. Wood and Willett J. Clark upon the street, Clark invited us to step into a coffee-house and drink with him. We all went into the coffee-house of David F. Clark, and drank; Mr. W. J. Clark then suggested that we take chairs and set down.—Dearing then proposed a series of interrogatories relative to the note spoken of; Mr. Clark and myself paid attention to the responses. I asked but few questions myself, and seemed serious; Willett Clark was diverted at the interview, and drew his chair behind Dr. Wood to prevent the Doctor from seeing him laughing.

In answer to Dearing's interrogatories, the Dr. Wood made a full disclosure, as I took it to be, relative to the facts concerning the note. We then left the coffee-house, and I invited Dr. Wood to call and see me at my office. About the time these discoveries were wanted from Dr. Wood, he was freely treated at the coffee-houses of Willett J. Clark and David F. Clark; whenever I treated him, it was at my own expense, and in friendship, and not to elicit testimony.

Int'y 6.—Interrogatories Nos. 4 and 5 waived by Russell's att'y. —Did or did not said Southard importune you to assist him further in this matter, after he had made his application for a review? Did he not express himself solely dependent for his success upon the exertions of *yourself* and (R. F. Baird, Esq.)? State fully how he talked, acted, and expressed himself towards you in your presence, after the time alluded to?

Ans'r.—I am the R. F. Baird mentioned in this question. Mr. Southard was anxious to get my affidavit relative to Wood's disclosures, and seemed anxious for me to befriend — in the suit. He spoke more than once to me, that he would like to have me act as of counsel in the case. The manner, conversations, and actings of Mr. Southard were of a sort indicating the most intense anxiety and earnestness to save his place.

Interrogatories Nos. 7, 8, 9, 10.—Waived by Russell's attorney.

Interrogatory No. 11.—Did or did not said Wood ever seem to apprehend or *expect* what your motive was during all this time of entertainment and interrogation?

Answer.—Dr. Wood did not suspect our intentions, as far as I could detect, but expressed much surprise and alarm to me, when he heard that we had given affidavits as to his statements. He seemed to think that we had already impeached his veracity. When I informed him that his veracity had not been impeached, he was relieved.

Interrogatory 12.—Copied to Elijah C. Clark's deposition—The witness—

Answer.—I had no doubt that Dearing was acting for Southard, as above stated, not only because I learned it from Dearing, but I saw Dearing and Southard conversing together several times, and because, after the conversations aforesaid were had with Wood, I conversed with Southard about the manner of holding the conversations, and obtaining the statements of Dr. Wood.

At the instance of Southard I further state, that I did give an affidavit at his instance, and that it is referred to in my affidavit given at the instance of Russell's counsel, which is made part of this deposition. And further sayeth not.

ROBERT F. BAIRD.

Affidavit of Robert F. Baird, part of his Deposition.

STATE OF KENTUCKY,
Jefferson County.

This day personally appeared before the undersigned, a Justice of the Peace in and for the State and County aforesaid, Robert F. Baird, Esq., who upon oath states :—I gave an affidavit in the case of Russell against Southard and others, to be use in an application for a Bill of Review in the Federal Court, at the instance of Daniel R. Southard. I had been repeatedly requested by Mr. Southard to have an interview with Dr. Peter Wood, in relation to his testimony previously given in said case. Mr. Southard told me that he would employ me as his counsel, but he made no arrangement to that effect. One day I met with E. R. Dearing on the street, and Dr. Peter Wood, and Willett J. Clark, by accident fell in company with us. Mr. Clark invited Capt. Dearing and myself to join him and Dr. Wood in a glass at a coffee-house.

My attention was drawn by Mr. Clark to a conversation about to be elicited from Dr. Wood. I guessed the purport of that conversation from having previously been spoken to by Mr. Southard. Mr. Clark was a friend of mine, and I readily listened to what was about to be said. What was said I have substantially stated in my former affidavit in this application, with this exception, however: that Dr. Peter Wood most emphatically stated, that James Southard never had any title to the land in controversy. I understood by that, that the Dr. meant he never had the fee simple, but that it was a conditional sale or a mortgage from Russell to him.

He stated that the matter was as distinct in his recollection as though it was but yesterday, and that what he had stated in his former deposition in the case was nothing but the truth.

I then procured of Messrs. Haggin & Harris, of my own accord, a printed decision of the Supreme Court of the United States in this case. I saw where the Court alluded to Dr. Wood's testimony, and pointed it out to Dr. Wood. He read it with evident interest, and reiterated the same statement to me as therein contained. Besides the two instances I have just named, I had several other private interviews with Dr. Wood on the same subject, and in all these interviews his statements in reference to this suit were substantially the same. He persisted in two things, to wit, that James Southard never had an absolute title to the land in question, and that the note given to him by J. B. Stewart, Esq., was given to him for a debt that Gilbert C. Russell had long and justly owed him.

Being interrogated, I answer,

Mr. Daniel R. Southard requested me to get a sight of that note, for the purpose I suppose of getting my affidavit in relation to it. I without hesitation indirectly declined taking any steps in the matter, and did not wish to be a voluntary witness in the affair between Russell and Southard. That is to say, I did not wish to hunt up facts to prove for either party.

Upon being further interrogated I answer,

That the conversation first alluded to in this affidavit, although accidental at the time, was just such an interview as had been planned by Mr. Southard, through the agency of Mr. Clark and others. Mr. Clark seemed to sympathize with Mr. Southard in his difficulties, and seemed disposed to render him service.

From what I could observe, Mr. Southard seemed to place confidence in Mr. Clark's affidavit, and wanted the affidavit of some other disinterested person to corroborate him, and hence the conversation with Mr. Wood was elicited in my presence. Mr. Daniel Rapelge is a nephew of Mr. Southard, and had given an affidavit in this cause, and Mr. Dozier, from whom an affidavit was expected *had been* given, was counsel in some way or other in the matter. There seemed to be a desire on the part of Mr. Southard, on that account, to have the affidavit of Mr. Willet Clark and some one else in corroboration.

Being further interrogated I answer,

That the conversation first alluded to in this affidavit took place four or five days previous to my first affidavit in this matter, and took place in the coffee-house owned by Daniel F. Clark, who I also understood has given an affidavit in this case. Mr. D. F. Clark was not present at that time. He is a brother of Willett J. Clark alluded to in this affidavit heretofore.

On being further interrogated I answer,

Willett J. Clark keeps a coffee-house and restaurant, at which Mr. John Rapelge, brother of Daniel Rapelge and nephew of Mr. Southard, is bar-keeper.

Being further interrogated I answer,

In casual conversations with Mr. Willett J. Clark, Mr. Clark informed me that Mr. Southard had been most importunate with him to do something *something* for him Southard, in the way of eliciting facts in reference to Dr. Wood's testimony, to be made use of on this application for a Bill of Review, so that Southard might obtain a change in the decree of the Supreme Court of the United in regard to his land, and that owing to Southard's age and these importunities, he was industrious to draw forth from Dr. Wood, such statements as might be conducive to Southard's benefit, and in such manner as those statements, when reduced to affidavits, might produce the desired end.

Being further interrogated, I answer,

In the various conversations I had with Dr. Wood, the old gentleman left no other impression on my mind than of the utmost sincerity on his part that what he had stated in his deposition previously given was true. I canvassed Dr. Wood upon this subject; he was consistent in all his statements, and, from all that I could perceive, was evidently sincere, and if any impression from my former affidavit might be left upon the mind of any person, inducing the belief that that affidavit was designed by me to disparage Dr. Wood in any way, I disclaim it. And further sayeth not

ROBERT F. BAIRD.

Subscribed and sworn to before me, this 10th day of June, 1852.

JOSEPH CLEMENT,
J. P. J. C.

A true copy. Attest,

JOHN A. MONROE,
C. C. C. K. D.

Deposition C. W. Logan.

Deposition of Caleb W. Logan.

Also the deposition of Caleb W. Logan, taken at the same place, on the 19th day of February, 1853, to be used on the same behalf, in the same suit, under the same commission upon the interrogatories for Caleb W. Logan thereto annexed, and herein described. Deponent being of lawful age, and personally known to the undersigned, and being solemnly cautioned and sworn, doth depose and say in answer

Int'y No. 1.—Did you or did you not know of the suit lately pending in the United States Circuit Court for the District of Kentucky, between Gilbert C. Russell and Daniel R. Southard and others, for the recovery of the farm then occupied by the said Southard, and did you or did you not know it about the time the suit was commenced?

Ans'r.—I have often heard of such a suit pending in said Court, but don't know when it was commenced. I heard of the suit before and since AND SINCE it was tried; heard that it went against Russell in the Court below, and for him in the Court above. And before the trial of it, I had at one time a copy, a part of the record or the whole of it, furnished me by Mr. Stewart, Russell's att'y, for examination, and I conversed with Stewart at that and other times about the case, and I have seen Southard going in and out of Loughborough's office, and I suppose it was in relation to said case.

Int'y No. 2.—Did you or did you not hear it often stated, and was it not a matter of general notoriety as to the terms on which said Russell had employed his counsel; and was it or was it not a matter of undoubted publicity that they (the counsel) were to receive a sum equal to one-half of the value of the property, if they succeeded? And do you or do you not consider that it was a matter too generally known for either said Southard or his counsel to be ignorant thereof?

Ans'r.—I have heard nothing from Russell or Southard upon the subject of this question; certainly nothing from Russell, and from Southard nothing that I recollect of. Yet I have, in some way, received the impression that Joseph B. Stewart was to be entitled either directly or indirectly to an interest in, or the value of an interest in the land in controversy. This impression I received before seeing a deed or record in the Jefferson County Clerk's Office. Whether I received this impression directly from Mr. Stewart's mouth I know not. It may have been derived from the zeal, activity, and industry I saw displayed by him in the prosecution and management of the case. I heard the matter talked about among the lawyers; but whether they had the same impression about the fee that I had I can't say; but I took it for granted that they had, and I supposed that Mr. Southard himself believed that Stewart was to have a portion of the land, or the value of it; but this is a mere supposition, founded upon knowledge of general principles. I never had any idea of the particular form of the contract between Russell and Stewart, but supposed that it was for a sum equal to some portion of the land.

Int'y No. 3.—Do you know or can you state any other matter or thing over and above what you have stated, which could be of benefit to the parties, complainants or defendants, or either of them. If yea, please declare the same fully and at large, as though you had been particularly interrogated thereto?

Ans'r.—My ideas are general as to the particular questions, and I have no particular knowledge as to the general question that would be material to either party that I know of, except that the labor, attention, and care bestowed by Mr. Stewart, for a long time, on what I considered an uncertain case, I thought fairly entitled him to a large fee, independent of any specific contract.

Cross-interrogatory.

Cross-int'y No. 1.—Did you not understand that the contract between Russell and his counsel was contrived and designed to evade the law against champerty?

Ans'r.—I always conceived, as a matter of course, that Mr. Stewart had been wise enough to have his contract made for a sum of money equal to some portion of the land, instead of for some portion of the land itself, as the contract in that form is understood to be without the operation of the champerty laws. My opinion is, that a contract made in that form has for its object to evade the champerty laws, though according to decisions such a contract is legal.

Cross-int'y No. 2.—Did you not understand that said suit of Russell against Southard and others was to be carried on, and was carried on by Russell's counsel at the cost and expense of said counsel, and that his remuneration was to come out of the property sued for?

Ans'r.—Such was my impression; but I never heard it from Russell nor from Stewart that I know of. It is my opinion that when they come to settle up, that the remuneration would be out of the land; but I did not suppose it was so by the contract.

Cross-int'y No. 3.—Have you not heard Joseph B. Stewart, counsel for Russell in said suit, while it was pending, speak of his expectation to own a portion of the property in controversy?

Ans'r.—I don't remember that I did while the suit was pending; but since it was decided, I heard him speak of the land as if he had an interest in it?

Cross-int'y No. 4.—Have you not heard said Stewart speak of the great outlay and expense he was put to in the conduct and prosecution of said suit?

Ans'r.—I think I have.

Cross-int'y No. 5.—Do you know that the original agreement under which said suit was instituted, was that Russell was to give his counsel one-half the property sued for?

Ans'r.—I do not.

6th cross-int'y waived by Southard's attorney.

And further saith not.

CALEB W. LOGAN.

Deposition David D. Spear.

Deposition of David D. Spear.

Also the deposition of David D. Spear, taken at the same time and place, under the same commission and interrogatories, in the same behalf in the same suit. Deponent being of lawful age, and solemnly cautioned and sworn, doth depose and say (and personally known to the undersigned), in answer to interrogatory.

Ans'r to Interrogatory No. 1.—I heard the same suit spoken of about the time it was commenced, and heard that it wanted but a few days of the statute of limitations barring the action.

Ans'r to Int'y No. 2.—I had the matter spoken of, and the terms on which Russell had employed his counsel, spoken of frequently among the members of the bar, and that the counsel was to get a sum equal to half of the matter in controversy. As to its being a matter of undoubted publicity, I would not extend that farther than among the members of the bar. I suppose that it was so generally understood among the members of the bar, that Southard or his counsel might have known it, though they might have been ignorant of it; that I don't know.

Ans'r to Int'y No. 3.—General interrogatory.—I answer that I don't know that I know anything further.

Cross-interrogatories.

Ans'r to Cross-int'y No. 1.—I did not. I supposed it to be like all other contracts of lawyers made in such cases.

Ans'r to Cross-int'y No. 2.—I understood that Russell's counsel was to receive for fee, a sum equal to one-half of the property, but as to the costs I never understood anything.

3d cross-interrogatory waived.

Ans'r to Cross-int'y No. 4.—I have heard Stewart speak of the great costs and outlay he was put to in said suit, but whether he spoke of his own funds, or the funds of others, I don't know.

5th and 6th cross-interrogatories waived.

And further saith not.

D. D. SPEAR.

Deposition A. W. Waller.

Deposition of A. W. Waller.

Also the deposition of A. W. Waller, taken at the same place, on the 21st of February, 1853, to be used in the same behalf in the same suit. Deponent being of lawful age, personally known to the undersigned, and solemnly cautioned and sworn, doth depose and say, under the commission and interrogatories propounded to C. J. Clark and others,

Ans'r to Int'y No. 1.—I say, I am well acquainted with the handwriting of Wm. D. Payne. I have often seen him write. I have examined the paper now shown to me, marked C. J. C., part of Charles J. Clark's deposition; the body of the extract is in the handwriting of said W. D. Payne, except that I believe the word "repurchase" is changed from the word "*redeem.*"

Ans'r to Int'y No. 2.—I have examined the word *purchase* after the syllable *re*, and say it is my opinion that it is not in the handwriting of said Payne.

Ans'r to Int'y No. 3.—I have looked closely at the word *repurchase*, and it is the word *redeem* changed to repurchase. I can see the letters *redeem* under the word *repurchase.*

Ans'r to Int'y No. 4.—The character of the letters in the word *repurchase* is not Payne's character; purchase is written in a different ink with a heavier hand, and has the appearance of being written with a different pen from the word *redeem* which is under it, and from the rest of the words on the paper.

And further sayeth not.

A. W. WALLER.

UNITED STATES OF AMERICA.
8th Circuit, Kentucky District, Louisville City, sct.

I, William S. Pilcher, Commissioner of affidavits, &c., in and for the said Circuit and District, certify, that the foregoing depositions of Alvin Wood, Charles J. Clarke, Thomas P. Smith, Edmund P. Pope, Elijah C. Clarke, Robert F. Baird, Caleb W. Logan, D. D. Spear, and A. W. Waller, were taken respectively at the place and at the times, in the behalf, and in the suit, under the authority, and upon the interrogatories mentioned in the caption of each of them. That each of said depositions was reduced to writing by me in the presence of said witnesses respectively, that I solemnly cautioned and swore each of them, and each of them signed his said deposition in my presence. That I am not of kin or of counsel for either of the parties, or interested in the matters in controversy between them. Given under my hand, at my office in the City of Louisville, this 22d of February, 1853.

WILLIAM S. PILCHER,
Commissioner, &c.

Deposition Elias R. Dearing.

Deposition of Elias R. Dearing.

Also the deposition of Elias R. Dearing, taken before William A. Hauser, Commissioner, pro tem., by virtue of the order of the United States Circuit Court for the District of Kentucky, at the office of Pilcher and Hauser, in the City of Louisville, Ky., on the 1st day of March, 1853, to be read on the part of Gilbert C. Russell, in the case of Daniel R. Southard and others against said Russell, on Bill of Review. The deponent being of lawful age, personally known to me, and cautioned, and first solemnly sworn the truth to speak, in answer to such questions as shall be put to him, deposes and says in answer to Int'y No. 1.

Answer.—I did give an affidavit in this cause at the instance of

Russell. I have examined the copy shown me, and heard it read by the commissioner; the affidavit contains the truth; it is a copy of the original. I have endorsed my name upon it, and now make it part of my deposition. (Witness here endorsed said affidavit in the presence of the commissioner.)

Int'y No. 2.—Answer.—I did give an affidavit at the instance of Southard, which was drawn by James J. Dozier, Esq.; the subject-matter of the affidavit was the statements he got me to draw from Dr. Wood. The statements were to be obtained by interrogations to Dr. Wood. The purpose of the affidavit was to be used in attacking the veracity of Dr. Wood. I was not acting alone in the matter. I was assisted by Daniel Rapelge, Willett J. Clark, R. F. Baird. Elijah C. Clark was present at some of the interviews but did not participate.

Int'y No. 3.—Answer.—I repeat, as stated in my affidavit, that there were remunerative inducements held out to myself, and I was authorized to make any arrangement with the others, necessary to bring the note to light; Willett Clark proposed to Wood to buy the note, and to give him money to let him see it.

As before stated, the object of the admissions to be drawn, was to attack Wood's deposition. The amount to be paid me was $500, and I was to make with others such arrangements as I pleased. There was no time fixed for the payment of the money. There was a reason assigned why I could not receive the money directly, and it was this, that it would disqualify me as a witness. I said to Mr. Southard that if he could not pay me, that he should employ Mr. Baird, and let him pay whom he pleased, and I think that he and Mr. Baird did have a conversation on the subject. The plan proposed was, that I should send for Dr. Wood, and have a conversation with him at David F. Clark's and Willett J. Clark's coffee-houses, and other similar places, and for about six weeks I did thus have frequent interviews with said Wood, and at all those interviews, either Mr. Baird, or Willett J. Clark, or both of them were present. It was further proposed that we should lay plans to have conversations with him when some one of the party should be present, and we always commenced by treating first, and then talking about the object proposed. I and Willett J. Clark generally proposed the questions, which were apparently casual, but were in fact premeditated, and always done in such a way as to prevent his suspecting our motive. He was freely plied with liquor at the places and coffee-houses at which we met. I paid for the liquor, and Willett J. Clark paid for the liquor, and D. R. Southard was to have paid for all of it. Southard promised to pay for any expense I should be at.

Int'y No. 4, waived.

Int'y No. 5, waived.

Int'y No. 6.—Answer.—After Southard filed his bill for a review, he did importune me further to assist him to sustain his bill. Mr. Southard expressed himself as greatly dependent for his success upon the services of myself and R. F. Baird, Esq. He evinced great anxiety for my assistance, and was with me in the upper part of the city very often. When he could not find me himself, he would send me word where to meet him.

Int'y No. 7.—I do know Daniel S. Rapelge very well; he lives in my neighborhood, and I see him every day. I meet him at the coffee-houses of Daniel J. Johnson, Willett J. Clark, and other coffee-houses; he is reported to be a nephew of Southard's. He has been very active in procuring testimony to benefit Southard in this suit. He was present, and called upon to take notice of what passed between myself and Dr. Wood. I have had frequent conversations with said Rapelge about this matter; said Rapelge said to me, that he was sorry I did not continue to assist his uncle, Daniel R. Southard, I replied that Southard had not paid me, as he had promised; then Rapelge said that he that his uncle would yet pay me, and he said that he would tell him to pay me. Rapelge evinced a good deal of feeling in his desire for me to help his uncle.

Int'y No. 8, waived.

Int'y No. 9, waived.

Int'y No. 10.—Answer.—This was kept up from the 1st of March, 1852, until about the time of the taking of the affidavits; we met at by day and by night, and at pretty much when we could.

Int'y No. 11.—Answer.—I think that Wood did not suspect what we were about until the affidavits were taken, then he came to us, and expressed great anxiety and alarm.

Int'y No. 12.—I know nothing further material, unless my memory be refreshed.—At the suggestion of Russell's counsel—I state, that upon a certain occasion I told Southard that I wanted some money, he said he could not give me any, but said he could loan it to me, and he went with me to Bicaro's to get money, and on that day he loaned me $100, to treat Peter Wood with it; I will here state, that the money I demanded from him was to pay me for my trouble, and not for my affidavit. My understanding with him had been, that I was not to give my affidavit, and I did not give it until hard pressed.

And further says not this deponent.

ELIAS R. DEARING.

Affidavit of Elias R. Dearing, part of his Deposition.

STATE OF KENTUCKY,
Jefferson County, *sct.*

Elias R. Dearing, personally known to me, personally appeared and made his affidavit in the following words and tenor, to wit, On interrogation, he states that he had, a short time ago, several conversations with Daniel R. Southard in reference to his suit with Gilbert C. Russell. He complained of injustice done him by the testimony of Dr. Peter Wood in the case. He wished to procure a copy of a note, given by Joseph B. Stewart, Esq., to Dr. Wood, for $280. He wanted some person to see that note, and he wanted all the admissions drawn from Dr. Wood about the note, and about the case generally, that could be drawn from the doctor. He wanted affiant to assist him in the matter, and told him five hundred dollars were no consideration with him, but that he could not offer the money to affiant, nor could affiant receive it. Affiant understood that Southard made him an offer indirectly, to use his time and skill in eliciting matter for testimony from Dr. Wood, and had several conversations with him in the presence of others, the substance of all which is set out in his former affidavits. Upon all these occasions, Dr. Wood was liberally treated to brandy, at the coffee-house of Willett J. Clark, David F. Clark, and David J. Johnson, and others, by persons who were endeavoring to assist this affiant in eliciting statements from him. Mr. Southard directed me to make any arrangement for his benefit, and he would stand the expenses. In one instance he promised to pay expenses incurred in the coffee-house of Willett J. Clark, where Dr. Wood was one of the party. This affiant believes Southard has not paid this bill, he was so informed by Mr. Clark; the bill was 3 or 4 dollars. Southard said that he could not offer money, lest it might disqualify affiant, and render his testimony nugatory; but he said he had means to use if he knew how to use them. This affiant then advised Southard to employ R. F. Baird as counsel, and reminded him that Baird was well acquainted with Wood, and would manage his case for him, and direct him how to use his money, and save his witnesses intact from a suspicion of corruption. No money was paid to Baird, as this affiant believes, by Southard. Southard said that he had money himself for the benefit of those who would put themselves to trouble in this matter for his benefit; and that his son-in-law, Samuel D. Tompkins, had plenty of it, and when he returned from the eastern cities, whither he had gone for merchandise, he, Southard, would defray all expenses, and satisfy all his friends in the premises. He said he could obtain more means from Mr. Tompkins than what he then had.

This affiant put himself to a good deal of trouble in drawing admissions from Dr. Wood. When Mr. Baird and Mr. Clark were present, this affiant put many questions to Dr. Wood, and so did Mr. Clark, and his responses were carefully treasured up in this affiant's memory. Baird and Clark were also careful to remember them.

In reference to Dr. Wood, this affiant states that his course in this matter was not intended to disparage him. That he has known him for 15 years, and knows no harm of him, and is friendly with him, and that his agency in this matter, aside from his affidavit, was prompted by an expectation that Southard would pay him liberally for his trouble; and this expectation was raised by the positive promises of said Southard to reward him.

And further this affiant saith not.

E. R. DEARING.

Subscribed and sworn to before me this 11th June, 1852.

ROBERT F. BAIRD,
Notary Public, Jeff. Co., Ky.

I, Robert F. Baird, of the City of Louisville, a Notary Public, duly commissioned for the County of Jefferson and State of Kentucky, do certify that Elias R. Dearing, personally known to me, personally appeared and made the foregoing affidavit, and subscribed and was qualified to the same.

[L. S.] Given under my hand and seal this 12th day of June, 1852.

R. F. BAIRD.

A true copy; attest,

JOHN A. MONROE,
C. C. C. K. D.

Deposition of Willett J. Clark.

Also the deposition of Willett J. Clark, taken at the same place, and for the same purpose, on the 2d day of March, 1853, before the undersigned, by virtue of the same authority. The deponent being of lawful age, personally known to me, and cautioned duly, and first solemnly sworn the truth to speak in answer to such questions as shall be put to him; in answer to

Int'y No. 1. Answer.—I did give an affidavit in this suit at the instance of Russell. The affidavit was read to me by the Commissioner. The affidavit contains the truth. I do make said affidavit part of my deposition, and have endorsed my name on the face of it. (Witness here endorsed the same in the presence of the Commissioner.)

Int'y No. 2. Answer.—I did give two affidavits in this cause at the instance of Southard. The object of the affidavits was to make statements in relation to the note given by Mr. Stewart to Dr. Wood. The statements were to be made from conversations to be held with Dr. Wood. All the conversations with Dr. Wood were held at my coffee-house, except one, to the best of my recollection; and that was spoken of in my former affidavits. It was held at David F. Clark's coffee-house. I acted in this matter on account of the friendship I had for Dearing. Dearing observed to me that it would be profitable, and on account of my friendship for him, I drew from Wood such conversations as I could. Wood may have been sent for to come to my coffee-house, but I have no recollection of it, at this time. Dearing informed me that it was supposed Stewart had given his note to Dr. Wood, to give his deposition; and the object was to show that Wood had been bribed, and thus invalidate his testimony. I was not acting alone in the matter; E. R. Dearing and R. F. Baird were acting with me. Daniel Rapalge was at my coffee-house every day, and on one occasion, at my request, to notice the conversation, acted with me. Wm. R. O'Brian was also officiating in the matter.

Int'y No. 3. Ans'r.—There may have been pecuniary inducements held out to others, but not to me, by Southard. Dearing said to me that we will be well paid for our services; but I said I wanted nothing, and would receive nothing. The intention of the statements were to be the basis of an attack upon said Wood's testimony. Dearing said to me that $500 would be no money or amount, if the points or necessary information could be obtained. Dearing did not say by whom to be paid, nor when. There was something said as a reason why remuneration could not be offered directly, but I do not remember who said it, nor what was said. There may have been some plan suggested to avoid the difficulty, but I do not remember it. The plan was, when we met him, to get him into conversation on this subject, and draw from him what we could in regard to the point; and I have no recollection of any other place at this time. A few days before I saw Dr. Wood, as hereinafter named, it had been planned by us to have a conversation with Dr. Wood. After this, Dr. Wood came to my coffee-house, and got drink, and went off. Dearing went after him; told him that he might sell the note he held on Stewart to me, and in a few minutes brought him back. That was the first conversation I held with Dr. Wood in reference to the note.

The first one, and then the other, as a general thing, interrogated him, and we did it in such a manner as to get information in relation to the note. Upon one occasion I was with Dr. Wood on the street, and we met Dearing and Baird, and I proposed to take a drink, and invited Dr. Wood, Dearing, and Baird, to go into my brother's coffee-house. We took a drink, and upon that occasion Dearing interrogated him.

Dr. Wood needed no invitation to drink when he came to my coffee-house; he asked me for it, and I gave it to him without charging him for it, because I had no expectation of getting any. I have seen Dearing treating him frequently, and he was freely plied with liquor. He drank at my house, at my brother's, and I have treated him at other places. During the time, and before we had planned these interviews, I have treated Dr. Wood.

Int'y No. 4, waived.

Int'y No. 5, waived.

Int'y No. 6.—Answer.—I do not remember whether Southard importuned me further to assist him after I gave my affidavit. He may or he may not. I have no recollection on the subject at this time.

Int'y No. 7, waived.

Int'y No. 8, waived.

Int'y No. 9, waived.

Int'y No. 10.—Answer.—I can't say how long this scheme of interrogation of Dr. Wood was kept up. I know that it was kept up several weeks. I think that most of our conversations were had in the evenings; some were after dark; and the first one concerning the — spoken of, was after dark. Our conversations were with him just as he happened to come.

Int'y No. 11.—Answer.—I do not know that Wood ever suspected while this interrogation was going on as to what we were at. He gave no indication that he did.

Int'y No. 12.—Answer.—He does not know that he knows anything material.

Counsel for Russell then made suggestions under Int'y No. 2. He answers.—The first affidavit I gave in favor of Southard was written by Dozier, I think. I gave another affidavit for Southard. Southard brought to me the second one written out. Southard stated to me that the original was torn; that he had a true copy with him, which I saw. The copy he showed me differed a little from the second affidavit I signed, though in sum and substance it may have been the same as the original. It seemed to me the same. I saw some difference in some of the words; but I could not determine what the effect would be. Southard stated to me that the one I signed last was copied by Judge Nicholas. In answer to further suggestions by same, he answers: To the best of my recollection, Dearing was the first who mentioned anything to me about the note; and the first proposition to purchase it was at the time Dearing brought him back, as before stated.

Suggestions by same under

Int'y No. 3.—Answer.—I saw Dearing and Southard in conversation frequently during the time these interviews were had. These conversations between Dearing and Southard were, or seemed to be had between themselves.

Cross-questioned by counsel for Southard, &c.

Answer.—The second affidavit was sworn to before George Morris, J. Peace. I thought at the time I swore to the affidavit that it contained the truth. And further this deponent saith not,

W. J. CLARK.

Affidavit of W. J. Clark, part of his Deposition.

JEFFERSON COUNTY,
State of Kentucky, sct.

The affiant, Willett J. Clark, personally known to me, personally appeared, and made this affidavit in the following words and tenor, to wit:

I have given an affidavit heretofore on the instance of Daniel R. Southard,—I mean the case of Russell *vs.* Southard. I had observed Mr. Southard at my coffee-house frequently some weeks ago, and on several occasions he inquired of me if Capt. Elias R. Dearing had addressed me on the subject of his (Southard's) suit with Russell. On these occasions, I replied that he had not *afterwards.* Afterwards, Dearing spoke to me on the subject privately, and I agreed, somewhat for the accommodation of Dearing, who is a friend of mine, to ply Dr. Wood on the subject of a note given Wood by Joseph B. Stewart, Esq. I was well acquainted with Wood, and had various conversations with him, the substance of which I have detailed in my former affidavit. To be more explicit as to my interviews with Southard alluded to. Southard would come into my bar-room and ask me "if Dearing had been here;" "if Dearing had had any interview with me of a private nature." I would reply that he had not. On one of these occasions when Southard was in, Dearing came in and took me to one side and explained the matter, which I found to be the matters and things relating to this suit, as before stated. Southard had been frequently about my bar-room for several days previously to the time of the incidents related, before he spoke to me of the business of a "private nature."

When Dearing spoke to me, he told me that this business would be profitable; that Southard would pay well for any trouble a man would put himself to on account of this suit. And urged me to assist him in his agency to find material for proof in this case. I replied that I would—anything honorable to accommodate him; but I wanted no compensation for my services; that what I did I would do gratuitously. And I did see Dr. Wood, and drew from him the admissions as I have stated in my affidavits. My agency in this matter was not dictated by any desire of pecuniary profit for myself; but I was glad to assist Capt. Dearing in an enterprise that would be profitable to him. I also felt a sympathy for Southard on account of his age, and the manner in which he would *surmount* his difficulties.

Doctor Peter Wood was much in my coffee-house while these things were going on, and during these occasions he drank freely, and I charged him nothing, nor did I charge anybody else for his drinks. Whatever Southard may have said to others on the subject of paying these little expenses, he said nothing to me on the subject, and I do not look to him for it. I did it, as I said before, as a matter of accommodation. I did not expect to give an affidavit when I was initiated in this matter; but after awhile, I was led to suspect that Southard was playing for my affidavit, and then I could not and would not have accepted any compensation from Southard, if the same had been offered. I used the word *day* in reference to the visits of Southard to my coffee-house, I perhaps should have said *night*. His visits, on the occasions alluded to, were invariably in the night. I deem it but justice to Dr. Wood to state that I have known him from my boyhood, and that he has attended my father's family as a physician. And my course toward Wood was not dictated by any disrespect towards him. He was in better circumstances when I first knew him than he is now, and was esteemed as a gentleman as much as any man, nor can I say anything now to his discredit. He is, however, fond of drink, and when excited by liquor is very garrulous on the subject of his travels and adventures.

And further affiant saith not.

W. J. CLARK.

Subscribed and sworn to before me, this 12th June, 1852.

ROBERT F. BAIRD,
Notary Public, Jeff. Co. Ky.

I, Robert F. Baird, of the City of Louisville, a Notary Public of the City of Louisville, duly commissioned and qualified for the County of Jefferson and State of Kentucky, do certify, that Willet J. Clark, personally known to me, personally appeared and made and subscribed and was qualified to the foregoing affidavit,

Given under my hand and seal this 12th June, 1852.

[L. S.] ROBERT F. BAIRD.

A copy. Attest,

JOHN A. MONROE,
C. C. C. K. D.

Deposition of Peter Smith.

Deposition of Peter Smith.

Also the deposition of Peter Smith, taken at the same place before the undersigned on the 4th day of March, 1853, and for the same purpose as the foregoing. The deponent being of lawful age, personally known to me and duly cautioned, and first solemnly sworn the truth to speak in answer to such questions as shall be put to him, deposes and says in answer to

Interrogatory No. 1.—State what is the condition of the farm in Jefferson County, lately occupied by D. R. Southard, as regards its condition for cultivation what sort of fencing is there upon it, judging from appearances. When do you suppose the fencing was put upon it?

Answer.—The farm is in a bad condition for cultivation. The fencing around the farm is very poor and some of it gone. The fencing has been there for many years. I have known it for twelve years and it was looking like an old fence when I first knew it.

Interrogatory No. 2.—How long have you known said farm? Did you or did you not know it when it was owned by Governor Floyd? State how the improvements now compare with what were on it then, if you remember them?

Answer.—A before stated, I have known this farm now twelve years. I did not know it when it was owned by Governor Floyd. I can't say how the improvements were, when Governor Floyd owned it, but they are not so good now as they where when I first knew the farm. The fencing and everything else is much worse. On the Southard portion of the place since the house was burnt there have been no improvements.

Interrogatory No. 3.—Did or did not D. R. Southard or his brother James, ever put any improvements on the place, if yea, please name them?

Answer.—Since I knew the place no improvements have been put upon it. James died about the time I came here, previous to that time I can't say what improvements were put upon the place if any.

Interrogatory No. 4.—Do you know or can you state any other matter or thing, over and above what you have stated, which would be of benefit to the parties complainants or defendants or either of them? if yea, please declare the same fully and at large, as though you were particularly interrogated thereto.

Answer.—I do not know that I know anything further unless suggested. At the suggestion of Russell's counsel I say. The place has been very much abused, and within the last year or two he has seen Southard's tenants haul or permit to be hauled, manure from the place on two occasions. I have lived on the Tompkins place for the last seven years, and now rent the whole Southard place. And further this deponent saith not.

PETER SMITH.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, City of Louisville, sct.

I, William A. Hauser, commissioner pro tem, by the order of said Court in the said Circuit and District certify, that the foregoing depositions of Elias R. Dearing, Willett J. Clark, and Peter Smith, were taken respectively at the place and at the times in the behalf, and in the suit under the authority, and upon the interrogatories mentioned in the caption of each of them. That each of said depositions was reduced to writing by me in the presence of said witnesses respectively, that I solemnly cautioned and swore each of them, and each of them signed his said deposition in my presence. That I am not of kin or counsel for either of the parties, nor interested in the matters in controversy between them. Given under my hand at said office in the City of Louisville, this 4th March, 1853.

WM. A. HAUSER,
Commissioner pro tem.

Interrogatories.

United States Circuit Court, Kentucky District.

GILBERT C. RUSSELL, Defendant. *ads.* D. R. SOUTHARD and others, Complainants,	On Bill of Review in Equity.

Interrogatories to take the deposition of witnesses, to be read on the part of Russell, at the trial of the above case.

Interrogatory No. 1.—Are you or are you not acquainted with Elias R. Dearing, of the City of Louisville. If yea, please state whether you think said Dearing, would or would not perjure himself upon oath? Did you ever know of his swearing falsely? And do you or not believe that he would?

Interrogatory No. 2.—Do you know or can you state any other matter or thing, which could be of service to the parties to this suit, complainant or defendant or either of them? If yea, please declare the same as full and at large in your answer, as though you were particularly interrogated thereto?

MONROE, MOREHEAD, & STEWART.

A copy. Attest,
JNO. A. MONROE,
C. C. C. K. D.

Deposition of T. W. Pollard.

Deposition of Thomas W. Pollard.

The deposition of Thomas W. Pollard, taken on the 4th day of March, 1853, at the office of Pilcher and Hauser, in the City of Louisville, Kentucky, to be read in behalf of Gilbert C. Russell, in the suit of Daniel R. Southard and others against him on the Bill of Review, now pending in the Circuit Court of the United States, for the 8th Circuit and District of Kentucky, by authority of the annexed commission on the interrogatories thereto attached, and the order of said Court. The deponent being of lawful age, and personally known to the undersigned, and first solemnly sworn and duly cautioned to state the whole truth, and to make true and perfect answers to the several interrogatories propounded to him, and having been duly examined by the undersigned, doth depose and say in answer to

Interrogatory No. 1.—Are you or are you not, acquainted with Elias R. Dearing of the City of Louisville? If yea, please state whether you think said Dearing would or would not perjure himself on oath. Did you ever know of his swearing falsely? And do you or not believe that he would?

Answer.—I have been and am now acquainted intimately with Elias R. Dearing, for from twelve to fifteen years. I was Deputy Clerk in the Police Court of said City, when said Dearing was Captain of the Watch. I do not believe that said Dearing would perjure himself, I have no doubt about the matter, I am satisfied that he would tell the truth. I never did know of his swearing falsely, I have often seen him sworn, and do not believe that he would swear falsely.

Int'y. No. 2.—Do you know, or can you state, any other matter or thing which could be of service to the parties to this suit, complainant or defendant, or either of them? If yea, please declare the same as full and at large in your answer, as though you were particularly interrogated thereto.

Ans'r—I am a merchant in the City of Louisville, of the firm of Pollard, Prather & Smith, and my acquaintance with Dearing is formed not only as clerk aforesaid, but by dealing with him since I was clerk aforesaid; and I have the utmost confidence in anything he may state, upon oath or otherwise. And further saith not.

THOMAS W. POLLARD.

Deposition of Frederick Turner.

Deposition of Frederick Turner.

Also the deposition of Frederick Turner, taken at the same time and place, and for the same purpose; the deponent being of lawful age, personally known to me, duly cautioned, and first solemnly sworn, doth depose and say in answer to

Int'y No. 1.—Answer.—I am acquainted with Elias R. Dearing. I have known him for twenty years or more. I think that he would not perjure himself on oath, and I think that he is entitled to credit on oath. I have never known of his swearing falsely. I do not believe that he would swear falsely.

Int'y No. 2. Answer.—I do not know that I know anything further material, except that I was for many years Marshal of the City of Louisville, and he, Dearing, was during 8 or 10 years of that time connected with the police, and Captain of the Watch part of the time; and during that time he acquitted himself with satisfaction. And further this deponent saith not.

FRED. TURNER.

Deposition of John H. Kerr.

Also the deposition of John H. Kerr, taken at the same place, and for the same purpose, on the 5th day of March, 1853; the deponent being of lawful age, personally known to me, and duly cautioned, and first solemnly sworn to tell the whole truth in answer to such questions as shall be asked him; in answer to

Int'y No. 1, Answers.—I am acquainted with Elias R. Dearing. I have known him nineteen years in Louisville. I do not think that said Dearing would perjure himself upon oath. I have never known of his swearing falsely, and I do not believe that he would swear falsely.

Int'y No. 2.—Upon the suggestions of Russell's counsel (the suggestion to which the witness answers was first made by Mr. Baird, as the friend of Mr. Dearing, then withdrawn by Mr. Baird, and then suggested by Russell's counsel), the witness answers.—I have been connected with the police of Louisville since the 18th of March, 1834, and Dearing was elected policeman on the same day, but he has not continued as watchman so long as I; he has been watchman, I think, some 8 or 10 years. He, Dearing, has not been watchman on public duty for 8 or 10 years last past.

In answer to suggestions for Southard's counsel, he says (Russell's counsel objects to the suggestions as being irregular), Dearing was in no regular business for the last two or three years before he went to the Mexican war as a soldier. He has not been *un*employed for the last 8 or 10 years. His son died during his absence, and I know his wife wrote to him to come home from Mexico; he did come home, but he returned to Mexico again; he started back, but I do not know that he got to Mexico. I did hear from Dr. Caldwell that he sustained an injury on a boat, and I believe he now gets a pension by reason of said injury. He has been engaged in no regular business since he returned from Mexico. He is living with his son-in-law. He owned a hack several years ago, and was a hack-driver. I presume he does go to coffee-houses. I have seen him at such places. I have frequently seen him acting as doorkeeper to negro balls. I do not know whether he has acted as doorkeeper at houses of prostitution. I have heard the Mayor say he allowed the negroes to have balls, if they would appoint Dearing as doorkeeper. I do not know whether Dearing has been employed by candidates for electioneering purposes. I don't know what others may have esteemed him; I have not myself esteemed him a man of dissolute and bad moral character. I do esteem him a man of good moral character.

And further this deponent saith not.

JOHN H. KERR.

Deposition of M. G. Holmes.

Deposition of M. G. Holmes.

Also, the deposition of M. G. Holmes, taken at the same place, at the same time, and at the same place, at the same time, and *at* the same purpose; the deponent being of lawful age, personally known to me, and duly cautioned, and first solemnly sworn, deposes and says in answer to such questions as shall be put to him; deposes and says in answer to

Int'y No. 1. Answer.—I am acquainted with Elias R. Dearing. I do not think that said Dearing would perjure himself on oath. I never did know of said Dearing swearing falsely. I do not believe that he would perjure himself.

Int'y No. 2. In answer to suggestions from Russell's counsel. Answer.—I have known Dearing for the last fifteen years, but have known him very intimately for the last 8 or 9 years. I have seen him nearly every day, except when he was absent in Mexico. I was for ten years Deputy Marshal for the City of Louisville, and during part of that time he served under me as supernumerary watchman. I look upon Dearing as entitled to as much credit on oath as any man in the City of Louisville.

And further this deponent saith not.

MARTIN G. HOLMES.

Deposition Joseph C. Baird.

Deposition of Jos. C. Baird.

Also the deposition of Joseph C. Baird, taken at the same time and place, and for the same purpose. The deponent being of lawful age, and personally known to me, and duly cautioned, and first solemnly sworn the truth to speak, in answer to such questions as shall be put to him; in answer to

Int'y No. 1, Answers.—I am acquainted with Elias R. Dearing. I have been intimately acquainted with him the last 8 or 9 years. I also served with him in the war with Mexico. Dearing went out as second lieutenant, and before he returned was promoted to the first lieutenancy. From my general knowledge of all that I have seen

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of him, I have no idea that he would perjure himself. I never did know of his swearing falsely. I do not believe that he would swear falsely. I believe that he would not swear falsely.

Int. No. 2.—Upon suggestions by Russell's counsel, I say that last spring I saw Southard have frequent conversations with Dearing, O'Bryan, Rapelgie, and others on the street; these conversations were held at night mostly. I understood from Dearing that he was about to get from Southard a large reward, I think $500, for services that he was about to render or could render in getting a note from Dr. Wood, and to be used in the suit that Southard then had, and for other services that he could render him. About that time, at night, I saw Southard and Dearing in conversation, and Dearing called me up; this was on the street. I went up, and Dearing remarked that he could render him great service, but that he wanted his pay in advance. Southard replied that he should go on and that he would pay him, but that he could not pay him in advance, for fear of being prosecuted for the penitentiary.

There was so much conversation held between Southard, Dearing, and the others, that it excited the inquiries of the neighborhood as to what was going on, and finally Dearing informed me as to what was going on. I am now a policeman and have been since 1847—the spring.

And further this deponent saith not.

JOSEPH C. BAIRD.

Deposition William Cross.

Deposition of William Cross.

Also the deposition of William Cross, taken at the same time and place, and for the same purpose. The deponent being of lawful age, personally known to me, duly cautioned and first solemnly sworn to tell the truth, deposes and says in answer to Int. No. 1.

Answer.—I am acquainted with Elias R. Dearing. I live in the same part of the city, and same ward with said Dearing. I think that he would not perjure himself upon oath. I never knew of his swearing falsely. I do not think that he would swear falsely.

Int. No. 2.—Answer.—I do not know that I know anything further. In answer to suggestions from Russell's counsel—I say I have been a member of the board of alderman since its organization, and a regular attendant upon its sittings. Elias R. Dearing was once sworn before that body upon a charge preferred against a city officer. Said Dearing's testimony was not called in question, and the charges against the officer were dismissed; Dearing being a witness at the instance of the party charged.

And further this deponent saith not.

WM. CROSS.

Deposition William Riddle.

Deposition of William Riddle.

Also the deposition of Wm. Riddle, taken at the same time and place, and for the same purpose. The deponent being of lawful age, personally known to me, and duly cautioned and first solemnly sworn to tell the truth in answer to such questions as shall be put, deposes and says in answer to

Int. No. 1.—I am acquainted with said Dearing. I think that he would not perjure himself on oath. I have never known of his swearing falsely. I do not believe that he would swear falsely.

Int. No. 2.—Answer.—I was President of the Board of Alderman in the City of Louisville, when charges were preferred against a city officer, and said Dearing was sworn as a witness. Dearing was the principal witness for the defence, and the charge against the officer was dismissed. I believed the testimony of said Dearing, and I presume the balance of the board did, as the charge was dismissed.

And further this deponent saith not.

WILLIAM RIDDLE.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, City of Louisville, sct.

I, William A. Hauser, Commissioner by an order of said Court, pro tem., and for the said Circuit and District, certify that the foregoing depositions of Thomas W. Pollard, F. Turner, John H. Kerr, M. G. Holmes, Joseph C. Baird, Wm. Cross, and Wm. Riddle, were taken respectively at the place and times, in the behalf, in the suit, under the authority and upon the interrogatories mentioned in the caption of each of them; that each of said depositions was reduced to writing by me in the presence of said witnesses respectively; that I solemnly cautioned and swore each of them, and each of them signed his said deposition in my presence. That I am not of kin or of counsel for either of the parties, nor interested in the matters in controversy between them. Given under my hand at said office in the City of Louisville, this 5th day of March, 1853.

WM. A. HAUSER,
Commissioner, pro tem.

Interrogatories.

G. C. RUSSELL
ads.
DANIEL R. SOUTHARD, and others. } On Bill of Review in Equity.

United States Circuit Court, Kentucky District.

Interrogatories to take the deposition of Charles Ripley, Esq., to be read as evidence on the part of G. C. Russell, on the trial of the above cause.

Int. No. 1.—Did you or did you not, as the attorney for *Cushing's* heirs, and the representative of a judgment against Daniel R. Southard, file in the Louisville Chancery Court a petition, asking to be let in as a bidder for a certain seventy acres of ground, previously sold to satisfy a decree in favor of Burk's heirs—proposing to pay the amount it was sold for a less quantity than seventy acres of the ground? And did you or did you not afterwards dismiss said petition? If yea, at whose instance and request did you dismiss, and upon what consideration or inducement?

Int. No. 2.—State whether or not the land which then was sold, constitutes part of the land in controversy in the above suit?

Int. No. 3.—Do you know, or can you state, any other matter or thing of benefit to the parties to this suit, complainant or defendant, over and above what you have stated? If yea, declare the same as fully and at large in your answer as though particularly interrogated thereto.

MOREHEAD, MONROE & STEWART,
For Russell.

A copy; attest,

JNO. A. MONROE,
C. C. C. K. D.

Deposition of Charles Ripley.

Deposition of Charles Ripley.

The deposition of Charles Ripley, Esq., taken to be read in the case of Gilbert C. Russell *ads.* Daniel R. Southard and others, on Bill of Review, now pending in the Circuit Court of the United States for the 8th Circuit and District of Kentucky, by authority of the annexed commission on the interrogatories thereto attached and herein described, on the 11th day of February, 1853, at the office of said Ripley, in the City of Louisville, in the State of Kentucky.

Deponent being of lawful age, personally known to the undersigned, and solemnly sworn, and cautioned to state the whole truth, and to make true and perfect answers to the several interrogatories propounded to him in this case, and having been duly examined by the undersigned, doth depose and say, in answer to

Int'y No. 1.—Did you, or did you not, as the attorney for Cushing's heirs, and the representative of Daniel R. Southard, file, in the Louisville Chancery Court, a petition asking to be let in as bidder for a certain seventy acres of ground, previously sold to satisfy a decree in favor of Burk's H's., proposing to pay the amount for which it was sold, for a less quantity than the seventy acres of ground? And did you, or did you not, afterwards dismiss said petition? If yea, at whose instance and request did you dismiss, and upon what consideration or inducement?

Ans'r.—Cushing's adm'r. had recovered a large decree against Danl. R. Southard, as attorney for said adm'r. I had filed a bill in the Louisville Chancery Court, the object of which was to set aside several conveyances made by said Southard to his son, James D. Southard, and others, as made without consideration, and was proceeding to enforce an answer from James D. Southard. Pending these proceedings, a sale was made by the Marshal of the Louisville Ch'y Court, in August or September, 1851, in the suit of Burks and Thompson against Daniel R. Southard, of seventy acres of land in Jefferson County, Kentucky, and William L. Thompson, one of the complainants, was returned as the purchaser for about $2000, possibly for upwards of that sum.

The Marshal's report of sale was laid over for exceptions by the the court, and on the 19th of September, 1851, I offered to the court to pay the amount of Thompson's bid for a less quantity of the ground than seventy acres, and moved the court, upon this offer, to open the biddings, which was ordered to be done. I made the motion in my own name and on my own responsibility, and not as attorney for any one, but the motive which induced me to make it, was to prevent so much of the land being placed beyond the reach of Cushing's claim. Afterwards, on the 17th of the then following October, I withdrew or waived my said motion, and the sale to Thompson was confirmed.

I withdrew my motion at the instance of Daniel R. Southard or Robert Tyler. I had various conversations with each of them upon the subject; they both desired it to be done. The inducement which influenced me was this. Various drafts of Daniel R. Southard, accepted by the persons on whom they were drawn, amounting to several thousand dollars, were given to me, as collateral security for the Cushing decree. On the 15th of October, 1851, I considered that the possession of these drafts placed my clients in as good a situation as they would have been by reducing the quantity of land sold to Thompson as above mentioned.

These drafts were handed to me by James D. Southard, in presence of his father, and I gave him a memo. or receipt.

Int'y No. 2.—State whether the land, when sold, constituted part of the land in controversy in the above suit.

Ans'r.—It is a part of the land conveyed many years ago by Gilbert C. Russell to James Southard, and which I understood is the same now in controversy between said Russell and Danl. R. Southard.

Int'y No. 3.—Do you know, or can you state, any other matter or thing of benefit to the parties to this suit, complainant or defendant, over and above what you have stated? If yea, declare the same as fully and at large in your answer as though particularly interrogated thereto.

Ans'r.—I proposed to pay the Thompson bid above mentioned for forty acres of the land, and would have paid it for much less. I did not want the land; my object was simply to have the biddings opened for the reasons above stated. I do not now remember in what part of the Southard tract that seventy acres was; the land least valuable of that farm is worth more than $200 per acre, taking any seventy acres together. That portion of the said farm on the turnpike nearest the city is greatly more valuable. The city has extended so much in that direction as to make that land very valuable property. And further sayeth not.

CHARLES RIPLEY.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, City of Louisville, sct.

I, William S. Pilcher, Comm'r of Affidavits, &c., in and for said Circuit and District, certify that the foregoing deposition of Charles Ripley, was taken by me at the time and place mentioned in the caption, under the authority therein stated, and was reduced to writing by me in the presence of said witness, and by me carefully read over to him, that said witness was solemnly cautioned, and examined by me on the interrogatories propounded to him, that he signed the said deposition in my presence, and that I am neither of counsel nor of kin to either of the parties to this suit, nor in any way interested in the event thereof, or in the controversy. Given under my hand the day and year named in the caption.

WM. S. PILCHER, *Com'r, &c.*

Interrogatories.

Gilbert C. Russell, } On Bill of Review in Equity.
ads.
Daniel R. Southard, and others.

Interrogatories to take the deposition of Gen. William S. Pilcher, to be read as evidence on the part of Russell, at the trial of the above cause.

Int. No. 1.—Are you, or are you not, the authorized Commissioner of the United States Circuit and District Courts for this City and County, for the taking of depositions, &c., &c., and was you, or was you not, acting in said capacity in the years 1848 and 1849?

Int. No. 2.—Was you, or was you not, applied to in your official capacity by the counsel of Gilbert C. Russell, to go to the residence of James D. Breckenridge to take his deposition, to be used as evidence on the part of Russell, in the trial of the above cause? If yea, did you or not go with said counsel to said Breckenridge's residence, and how often did you go?

Int'y No. 3.—Please state what occurred to hinder your taking said deposition — who was present besides yourself and Russell's counsel? Did either he or you get to see Mr. Breckenridge, and what reason was assigned, if any, for your not seeing him?

Int'y No. 4.—Did or did not the counsel of Russell propose to propound a few simple questions, which should be left with the said Breckenridge, after his being sworn, so that he might answer them at his convenience, without either laboring or disturbing his mind? And did or did not said Breckenridge still refuse to testify?

Int'y No. 5.—Did or did not the counsel of said Russell seem to attach much importance to the testimony which he desired to elicit from said Breckenridge?

Int'y No. 6.—Do you know, or can you say anything touching the matters in controversy in the above suit, of benefit to the parties, complainants and defendants, or either of them, over and above what you have stated? If yea, please declare the same fully and at large as though you were particularly interrogated thereto.

MONROE, MOREHEAD, & STEWART.

A true Copy.
JNO. A. MONROE,
C. C. C. K. D.

Deposition William S. Pilcher.

Deposition of William S. Pilcher.

The deposition of William S. Pilcher, taken to be read in the case of Gilbert C. Russell *ads.* Daniel R. Southard, and others, on a Bill of Review, now pending in the Circuit Court of the United States for the 8th Circuit and District of Kentucky, by authority of the annexed commission on the interrogatories thereto annexed, and herein described, on the 10th day of February, 1853, at the office of said Pilcher, in the City of Louisville, in the State of Kentucky. The deponent, being of lawful age, and personally known to the undersigned, and solemnly sworn and cautioned to state the whole truth, and to make true and perfect answers to the several interrogatories propounded to him in this case, and having been duly examined by the undersigned, doth depose and say in answer to

Int'y No. 1.—Are you or are you not the authorized commissioner of the United States Circuit and District Court, for the City and County, for the taking of depositions? and were you or were you not acting in said capacity in 1848 and 1849?

Ans'r.—I am the authorized commissioner, as described in the question, and was so acting in the years 1848 and 1849.

Int'y No. 2.—Were you or were you not applied to, in your official capacity, to go to the residence of James D. Breckenridge to take his deposition, to be used in evidence on the part of Russell on the trial of the above cause? If yea, did you or not go with said counsel, and how often did you go?

Ans'r.—In the original suit of Gilbert C. Russell ag'st Daniel R. Southard, and others, pending in the United States Court for the 8th Circuit and Kentucky District, I was applied to by J. B. Stewart, attorney for said Russell, for the purpose described in the question. I did go with him, and took with me the commission and interrogatories under which I was directed to act. I do not recollect now, certainly, how often I went, but my impression is, that I was called on by and went in company, three times to the residence of said Breckenridge, with said Stewart.

Int'y No. 3.—Please state what occurred to hinder your taking said deposition? Who was present besides yourself and Russell's counsel? Did either he or you get to see Mr. Breckenridge? What reason was assigned, if any, for your not seeing him?

Ans'r.—James D. Breckenridge was in very bad health. It seems that he had a nervous affection, under which he was palsied and speechless. He heard what was said to him, but could not speak. He replied by signs, and by spelling words by letters, which he told off with a pointer from a card which he held in his hand. On one of my visits, I saw no person, either for Southard or of the family of Mr. Breckenridge. Mr. Loughborough, attorney for Southard, and the confidential friend and adviser of Mr. Breckenridge, was expected to attend, but he, as I now remember, did not come. On one of the visits, perhaps the second, it is my impression that I did see Mr. Breckenridge, when I saw him use his card and pointer to make himself understood; if I am right in this impression, then I think Mr. Loughborough, Mr. Breckenridge, Mr. Stewart, and perhaps Dr. Flint were at the house, and all in the room of Mr. B., except Mr. Stewart.

Mr. Breckenridge lived on the east side of Fifth Cross Street, between Walnut and Chesnut Streets, in Louisville, immediately opposite to the Baptist African Meeting-house. On my third visit, Mr. Stewart and myself sat upon the steps of that Meeting-house, and waited for the coming of Mr. Loughborough, whom Mr. Stewart notified in my presence, in Loughborough's office, of his intention to take, on that day, Breckenridge's deposition, which Mr. Loughborough said Stewart should have, if Breckenridge was able to give it; and my impression is, that Loughborough then added that he would consult Dr. Flint, the physician of Breckenridge, on that point; at any rate, after waiting some time on the steps af'sd, Messrs. Loughborough and Flint did come, I think, together, and entered the house, saying that we should soon know if the deposition of Mr. B. could be taken.—After some time spent in the house, Messrs. Flint and Loughborough returned from the house, and at the gate, Dr. Flint gave it as his medical opinion, that the deposition could not be taken without imminent peril to his patient, and for that reason the deposition was not then taken; and I think the same reason prevailed against taking it on the other, and former visits I made for that purpose.

Int'y No. 4.—Did or did not the counsel for Russell propose to propound a few simple questions, which should be left with said Breckenridge, after being sworn, so that he might answer them at his convenience, without either laboring or disturbing his mind? And did or did not said Breckenridge still refuse to testify?

Ans'r.—It is my impression that the proposition suggested in the question was made by Mr. Stewart, as to leaving the interrogatories and commission I had, that he (B.) might answer the interrogatories at his leisure, and with the least excitement; and it strikes me now, that upon this proposition being entertained by Mr. Loughborough, that I went, as mentioned, into the room of Mr. B. to swear him, and to leave the papers, but that in the room, on consultation with the patient, and perhaps with the doctor, the proposition was declined, as too exciting for the present. It seemed to be admitted, that while Mr. B. could not speak, he could read and write.

Int'y No. 5.—Did or did not the counsel of said Russell seem to attach great importance to the testimony which he desired to elicit from said Breckenridge?

Ans'r.—Mr. Stewart was solicitous, and, I thought, importunate, to get the deposition of said Breckrenridge in said case, and I am sure that he regarded the testimony of Breckenridge of great importance to his clients.

Int'y 6.—Do you know or can you say anything touching the matters in controversy in the above suit of benefit to the parties, complainants and defendant, or either of them, over and above what you have stated? If yea, please declare the same fully and at large, as though you were particularly interrogated thereto.

Ans'r.—I am not now aware of my knowing anything more material to either of the parties, except at the suggestion of Southard's attorney. I say that P. S. Loughborough, now dec'd, was the attorney-at-law, as well as the cofidential friend and adviser of J. D. Breckenridge in his lifetime, and was the executor of Breckenridge after his death. I do not intend to convey the impression that the counsel of Southard had access to Breckenridge as such in preference of or to the exclusion of the counsel of Russell. If both had stood in the same relation to Mr. Breckenridge it is my impression that both would have been treated by Mr. B. exactly alike.

And further saith not.

WM. S. PILCHER.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, sct.

I, James S. Speed, Mayor of the City of Louisville, duly commissioned, and so acting, certify that the above-named witness having been by me duly sworn, cautioned, and examined, did, at the time and place stated in the caption, depose and give the above answers and no more to the several interrogatories propounded to him, and the evidence so given by the witness having been reduced to writing by him in my presence, was subscribed by him in my presence; and that I am not akin to or counsel of either of the parties, or in anywise interested in the controversy. Given under my hand at the time and place stated in the caption.

JAMES S. SPEED,
Mayor.

Interrogatories.

United States Circuit Court, Kentucky District.

G. C. RUSSELL,
ads.
D. R. SOUTHARD, and others.
} On Bill of Review in Equity.

Interrogatories to take the deposition of Doctor J. B. Flint, to be read as evidence on the part of Russell at the trial of the above cause.

Int'y No. 1.—Was you or was you not the attending physician of James D. Breckenridge, dec'd, in his last sickness?

Int'y No. 2.—Was or was not application made by the counsel of Gilbert C. Russell to obtain the deposition of said Breckenridge, to be used as evidence in a certain trial then pending between said Russell and D. R. Southard, and others?

Int'y No. 3.—Did or did not said Russell's counsel call repeatedly at your office, and once after night at your residence, to endeavor, through your medium, to obtain said deposition? And did or did not said counsel seem to attach great importance to said deposition, and express great anxiety to get it?

Please state fully all that transpired within your knowledge in this respect.

Int'y No. 4.—Was or was you not at the residence of said Breckenridge on one or more occasions when the counsel of Russell, in company with the commissioner, came there to obtain said deposition? If yea, please state who else was there besides yourself, and what transpired?

Int'y No. 5.—Did or did not the counsel of Russell offer to reduce the examination to a few simple questions, and did he or not propose that the commissioner should swear the said Breckenridge, and leave the questions with him, that he might answer them at his leisure and convenience? And did you or not give it as your opinion that said Breckenridge's deposition could be taken in that way without any possible prejudice to his health? And did he or not still refuse to give it, and what reason, if any, did he assign for not giving it? Please state fully all that may have happened in this respect.

Int'y No. 6.—Do you know or can you say anything which may be of benefit to the parties complainant or defendant? If yea, please declare the same as fully and at large in your answer as though you were particularly interrogated thereto.

MOREHEAD, MONROE, & STEWART,
For Russell.

A copy; attest,

JNO. A. MONROE,
C. C. C. K. D.

Deposition, J. B. Flint.

Deposition of Joshua B. Flint.

The deposition of Joshua B. Flint, taken to be read in the case of Gilbert C. Russell *ads.* Danl. R. Southard and others, on Bill of Review, now pending in the Circuit Court of the United States for the 8th Circuit and District of Kentucky, by authority of the

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annexed commission on the interrogatories thereto annexed and herein described on the 8th day of February, 1853, at the office of Wm. S. Pilcher, in the City of Louisville and State of Kentucky. Deponent being of lawful — personally known to the undersigned, and solemnly sworn and cautioned to state the whole truth, and to make true and perfect answers to the several interrogatories propounded to him in this case, and having been duly examined by the undersigned, doth depose and say in answer to

Int'y No. 1.—Were you or were you not the attending physician of Jas. D. Breckenridge dec'd in his last sickness?

Ans'r.—Yes.

Int'y No. 2.—Was or was not application made by the counsel of Gilbert C. Russell to obtain the deposition of said Breckenridge, to be used as evidence in a certain trial then pending between said Russell and D. R. Southard and others?

Ans'r.—I do know that Mr. Joseph B. Stewart was anxious to obtain Breckenridge's testimony in regard to some case in which he was interested.

Int'y No. 3.—Did or did not said Russell's counsel call repeatedly at your office, and once after night at your residence, to endeavor, through your medium, to obtain said deposition, and did or did not said counsel seem to attach great importance to said deposition, and express great anxiety to get it? Please state all that transpired within your knowledge in this respect?

Ans'r.—Mr. Stewart did call on me repeatedly with the purpose of having my opinion as to the propriety of putting the interrogatories desired to Mr. B. He appeared to be very anxious about it, and to think that Mr. B.'s evidence was very important to him or his client. I promised to examine my patient again, and make up my best judgment upon the propriety, as it might affect his health, of submitting him to the proposed examination.

Int. No. 4.—Were you or were you not at the residence of said Breckenridge, on one or more occasions, when the counsel of Russell, in company with the commissioner, came there to obtain said deposition? If yea, please state who else was there besides yourself, and what transpired?

Ans'r.—I remember being at Mr. B.'s house on one occasion when Mr. Stewart and Gen'l W. S. Pilcher were there for the purpose of taking the proposed evidence. I went into the room, observed the condition of Mr. B., and concluded that it would probably aggravate his disease to have the process of examination carried on, and therefore could not agree that it was proper to subject him to it. I do not remember perfectly who were in the room with Mr. B. at that time; but my impression now is that his wife and Mr. Loughborough were present at the time. I did not, at that time, nor at any other time speak of the business to Mr. B. himself, but felt confident that any such effort as the proposed examination would involve, could not fail to be injurious to his health, and, therefore, as his physician, felt bound to advise against it.

Int. No. 5.—Did or did not the counsel of Russell offer to reduce the examination to a few simple questions, and did he or not propose that the commissioners should swear the said Breckenridge, and leave the questions with him that he might answer them at his leisure and convenience? and did you or not give it as your opinion that said Breckenridge's deposition could be taken in that way, without any possible prejudice to his health, and did he or not still refuse to give it? and what reason, if any, did he assign for not giving it? Please state fully all that may have happened in this respect.

Ans'r.—Mr. Stewart did propose to conduct the examination as intimated in the question; but I did not agree that in this way it would be altogether harmless to the patient. Why he did refuse to answer in this mode, or in any other mode, if he did so refuse, of which I know nothing, I do not know.

Int'y No. 6.—Do you know or can you say anything that may be of benefit to the parties, compl'ts or defendant? If yea, please declare the same as fully and at large in your answer as though you were particularly interrogated thereto.

Ans'r.—Mr. B. had organic disease of the brain, of which he died, and his nervous system was very *excitable*, and I inferred that he could not fail to suffer from being forced into recollections or statements on a subject, which, for reasons that I did not know, was calculated to be an exciting one to him. Mr. Loughborough appeared to be an intimate and confidential friend of Mr. B., and was with him very often, by night and by day, during his illness.

And further saith not

JOSH. B. FLINT.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, City of Louisville, sct.

I, William S. Pilcher, Commissioner of Affidavits, &c., in and for the said circuit and district, residing in the city of Louisville, certify that the above-named, Joshua B. Flint, was by me duly cautioned and sworn and examined, and thereupon, at the time and place stated in the caption, did depose and give the above answers, and no more, to the several interrogatories so propounded to him, and the evidence so given by the witness was by him reduced to writing in my presence, and in my presence by him subscribed. And I further certify that I neither of kin or of counsel to, or for either of the parties to this suit, or in any manner interested in the matter or in the event thereof. Given under my hand, at the time and place mentioned in the caption.

WM. S. PILCHER,
Comm'r of Affidavits, &c.

Interrogatories.

G. C. Russell,
ads. } On Bill of Review, in Equity.
D. R. Southard and others.

Interrogatories to take the deposition of Tilman Magruder and others, to be read as evidence on the part of G. C. Russell at the trial of the above cause.

Int'y No. 1.—Was you or was you not acquainted with James Southard, dec'd, during his lifetime? And are you or are you not acquainted with Dan'l R. Southard? How long have you known him or them?

Int. No. 2.—Do you or do you not know the farm in Jefferson County, near the city of Louisville, recently occupied by Daniel R. Southard, and now in controversy in this suit? How long have you known it?

Int. No. 3.—Did or did not James Southard, dec'd, own said farm, and from whom did he obtain it?

Int'y No. 4.—Do you or do you not know anything about the nature of the conveyance by which James Southard obtained the possession of said farm? whether it was or was not intended as an absolute sale, or as a security for money advanced by him to the person from whom he got it?

Int'y No. 5.—Did you or did you not ever have any conversation with James Southard about the manner in which he obtained said farm? If yea, please state to the best recollection what said James stated about the character of the conveyance.

Int'y No. 6.—Did or did not said James, in any conversation he may have had with you, admit or recognise the right of Russell to have redeemed said farm within a certain time by the repayment of the amount advanced with interest?

Int'y No. 7.—Did or did not said James assign or state any reason or occurrence that may have prevented said Russell from redeeming the said farm? If yea, please state what it was.

Int'y No. 8.—What sort of a bargain did James Southard seem to feel that he had made in his conversations with you, a good or a bad one? And did he or not make allusion to certain claims that he had transferred in the arrangement, and did he seem to consider them at that time very collectable or not?

Int'y No. 9.—Had you or not reason to believe, and did or did not the opinion prevail generally in the community, that the means which were advanced to Russell were, in reality, the money or assets of Dan'l R. Southard, or that there was or was a joint interest in them between he and his brother James? State any facts or circumstances that might or did lead you or others to such a conclusion.

Int'y No. 10.—Did you or not know Dan'l R. and James Southard in connexion with a firm under the title of Southard & Starr, in the city of Louisville? If there was such a firm, did it or not fail? In what capacity did James and Daniel R. Southard respectively act in connexion with that firm, and how did it wind up?

Int'y No. 11.—What was James Southard's character as a business man? Was he or not close and exacting in his transactions? From your knowledge, or from his reputation, do you or not consider him a man who would surrender gratuitously, and without consideration, a good and profitable bargain, when he could not be compelled to do so?

Int'y No. 12.—Was or was not James Southard a usurer, or did he or not invest his money in shaving notes, or in loaning at usurious rates of interest? Was or was not such his reputation?

Int'y No. 13.—What is Daniel R. Southard's reputation and general character for truth and veracity? Is it good or bad? From all you have heard, would you believe him on oath, when largely interested?

Int'y No. 14.—Do you know or can you say anything of interest or benefit to the parties to this suit, complainants or defendant, over and above what you have stated? If yea, please declare the same as fully and at large in your answer, as though you were particularly interrogated thereto.

MONROE, MOREHEAD & STEWART,
For Russell.

A Copy. Attest,
JOHN A. MONROE,
C. C. C. K. D.

Deposition George W. Chambers.

Deposition of George W. Chambers.

The deposition of George W. Chambers, taken to be read in the case of Gilbert C. Russell *ads.* Daniel R. Southard and others, on Bill of Review now pending in the Circuit Court of the United States for the 8th Circuit and District of Kentucky, by authority of the annexed commission on the interrogatories thereto annexed and herein described, on the 8th day of February, 1853, at the office of William S. Pilcher, in the city of Louisville, in the State of Kentucky. The deponent being of lawful age, personally known to the undersigned, and solemnly sworn, and cautioned to state the whole truth, and to make true and perfect answers to the several interrogatories propounded to him in this case, and having — duly examined by the undersigned, doth depose and say in answer to

Int'y No. 1.—Were you or were you not acquainted with James Southard, dec'd, during his lifetime? And are you or are you not acquainted with Daniel R. Southard? How long have you known him or them?

Ans'r.—I knew James Southard, dec'd, I think, from the year 1820 or 1821 till his death. Also Danl. R. Southard from same period, and ever since, with only casual intercourse of late years.

Int'y No. 2.—Do you or do you not know the farm in Jefferson County, near the City of Louisville, and recently occupied by Danl. R. Southard? How long have you known it?

Ans'r.—I have known said farm for forty years.

Int'y No. 3.—Did or did not James Southard, dec'd, own said farm, and from whom did he obtain it?

Ans'r.—James Southard occupied said farm, and I suppose owned it; he having, as he informed me, made a conditional purchase of it from Col. Gilbert C. Russell, to the effect that said Russell had the privilege of redeeming it by a certain time, which said James Southard alleged, he, Russell, had failed to do.

Int'y No. 4.—Do you or do you not know anything about the nature of the conveyance, by which James Southard obtained the possession of said farm? Whether it was or was not intended as an absolute sale, as a security for money advanced by him to the person from whom he got it?

Ans'r.—All that I know about it was derived from the parties themselves. James Southard informed me that he had purchased said farm from said Russell, for, I think, about five thousand dollars, near half of which, he stated, he had paid in money, and the balance in claims upon Saml. M. Brown, Wm. D. Payne, and Jas. C. Johnston, giving said Russell the right to redeem said farm, according to my present recollection, in four months from the date of sale or purchase.

Int'y No. 5.—Did you or did you not ever have any conversation with James Southard about the manner in which he obtained said farm? If yea, please state to the best of your recollection what said James stated about the character of the conveyance?

Ans'r.—I have, and the purport of said conversation was about the same in substance as I have stated in my answers to interrogatory No. 4.

Int'y No. 6.—Did or did not said James, in any conversation he may have had with you, admit or recognise the right of Russell to redeem said farm within a certain time, by the repayment of the amount advanced, with interest?

Ans'r.—He did, except I don't recollect the *specification* of *interest.*

Int'y No. 7.—Did or did not James Southard assign or state any reason or occurrence that may have prevented said Russell from redeeming said farm? If yea, please state what it was.

Ans'r.—He informed me, to the best of my recollection, that he had received a communication from said Russell, in which he represented that his cotton-gin, with the greater part of his cotton crop, had been burnt; and that in consequence thereof, he would be rendered unable to redeem said farm at the time stipulated.

Int'y 8.—What sort of a bargain did James Southard seem to feel that he had made, in his conversations with you? A good or a bad one? And did he or not make allusion to certain claims that he had transferred in the arrangement? And did he seem to consider them at that time very collectable or not?

Ans'r.—James Southard often spoke of his purchase of said farm, considering that he had got a good bargain; and my present impressions are, that he regarded the claims he had assigned in part payment thereof, of very questionable solvency.

Int'y No. 9.—Had you or had you not reason to believe, and did or did not the opinion prevail generally in the community, that the means which were advanced to Russell, were in reality the money or assets of Danl. R. Southard? or that there was or was not a joint interest in them between him and his brother James? State any facts or circumstances that might or did lead you or others to such conclusion.

Ans'r.—It was the general impression among those familiar with the two Southards, that the money with which James operated, and with which he purchased said farm, was the money of Daniel, derived from the firm of Southard & Star, that had failed, of which firm Daniel was a member; and that James could not so suddenly have become possessed of such extensive means in any other way, as he had no visible means of accumulating money, other than whatever he may have received as a salary from Southard & Starr, for whom he had acted as clerk or salesman.

Int'y 10.—Did you or not know Daniel R. and James Southard, in connexion with the firm under the style of Southard and Starr, in the City of Louisville? If there was such a firm, and did it or not fail? In what capacity did James and Daniel R. respectively act in connexion with that firm, and how did it wind up?

Ans'r.—I knew them in the connexion (with said firm), which I have mentioned in my answer to Interrogatory No. 9.—I do not now remember to have heard how said firm wound up exactly; the said firm failed, as before stated.

Int'y No. 11.—What was James Southard's character as a business man? Was he or was he not close and exacting in his transactions? From your knowledge or from his reputation, do you or do you not consider him a man, who would surrender gratuitously and without consideration a good and profitable bargain, when he could not be compelled to do so?

Answer.—James Southard was a close and an exacting man in his transactions, and often spoke of having overreached those with whom he traded, and was one of the last of men, that would have gratuitously surrendered any advantage thus obtained.

Interrogatory No. 12.—Was or was not James Southard an usurer, and did he or not invest his money in shaving notes, or in loaning at usurious rates of interest? Was or was not such his reputation?

Answer.—He was a usurer, I have often heard him speak of his operations in that way, and such was his reputation.

Interrogatory No. 13.—What is Daniel R. Southard's reputation and general character, for truth and veracity? Is it good or bad? From all you have heard, would you believe him on oath when largely interested?

Answer.—Daniel R. Southard's reputation and general character for truth and veracity are bad, and if all that is said of him be true, I would not credit him on oath, when his interest was involved to any great extent.

Interrogatory No. 14.—Do you know or can you say anything of interest or benefit to the parties to this suit complainant or defendant, over and above what you have stated? If yea, please declare the same fully and at large in your answer, as though you were particularly interrogated thereto.

Answer.—I know nothing special that I now remember, except at the suggestion of Southard's counsel, I state that at the time of the conversation mentioned in my answer, to Interrogatory No. 7,—I think that James Southard then mentioned, that he did not think said Russell would be able to redeem said farm, within the terms of the contract or conditional sale. And further deponent sayeth not.

G. W. CHAMBERS.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, City of Louisville, sct.

I, William S. Pilcher, commissioner of affidavits, &c., in and for said Circuit and District, certify, that the foregoing deposition of George W. Chambers was reduced to writing by me in the presence of said witness, and then carefully by me read over to him, at the place and time mentioned in the caption thereof; that said witness, after being solemnly cautioned and sworn by me and duly examined, subscribed the same in my presence.—That I am not of kin or of counsel for either of the parties to this suit, and in no way interested in the controversy between them. Given under my hand the day and year mentioned in the caption.

WM. S. PILCHER,
Commissioner, &c., &c.

Deposition Tillman Magruder.

Deposition of Tillman Magruder.

Also the deposition of Tillman Magruder, taken at the office of Pilcher and Hauser, on the 28th February, 1853, before Wm. A. Hauser, commissioner pro tem., to be used for the same purpose as the foregoing. The deponent being of lawful age, personally known to me, and solemnly sworn to speak the truth in answer to such questions as shall be put to him, deposes and says in answer to

Interrogatory No. 1.

Answer.—I knew James and Daniel Southard, I cannot say how long, but I knew James long before his death.

Interrogatory Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11.—Waived.

Interrogatory No. 12.

James Southard's general character was that of a usurer. I generally got the money through Daniel, but the notes were payable to James. I have myself borrowed money of James at usurious interest.

Interrogatory No. 13.—Waived.

Interrogatory No.

Answer.—I know nothing more, and further this deponent says not.

TILLMAN MAGRUDER.

At his request, signed by the Commissioner, in presence of the Counsel for both parties.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, City of Louisville, sct.

I, Wm. A. Hauser, commissioner pro tem., by order of said Court in and for said Circuit and District, certify, that the foregoing deposition of Tillman Magruder was reduced to writing by me in the presence of said witness, and was read over by me to him at the time and place mentioned in the caption thereof; that said witness, after being duly cautioned and solemnly sworn by me, requested the undersigned to subscribe his name, which was done in his presence. That I am not of kin or of counsel for either of the parties to this suit, and in no way interested in the controversy between them. Given under my hand this 28th February, 1853.

W. A. HAUSER,
Commissioner pro tem.

Deposition of Philip Richardson.

The deposition of Philip Richardson, taken at my office in the City of Louisville, on the 17th of July, 1852, in the presence of

3545.

C. S. Morehead and J. B. Stewart, attorneys for Russell; and S. S. Nicholas and W. T. Haggin, counsel for D. R. Southard and others, to be read on behalf of G. C. Russell, in the cause pending in the Circuit Court of the United States, in the District of Kentucky, wherein D. R. Southard and others are complainants, and said Gilbert C. Russell is defendant. The counsel for each party being present waive notice. Deponent being of lawful age, and first duly cautioned and sworn, deposeth and saith in answer to interrogatories—

1st, by def't's counsel.—Are you or are you not about to leave the United States, and if so, how long will you be gone?

Ans'r.—In about eight or ten days I expect to leave the United States, and expect to be absent from fifteen or twenty months. I go to Europe.

No. 2.—Are you or are you not acquainted with the tract of land in controversy between Southard and Russell in this suit?

Ans'r.—I rented the tract of land in controversy of James Southard, in 1828. I rented it in the last day of February, 1828, and lived there until the middle of January, 1829.

No. 3.—State if you had any conversation with James Southard at the time of renting, or afterwards, in reference to the terms on which he claimed said farm? State all that he said in any conversation you may have had with him on that subject?

Ans'r.—I rented that farm for $125 per year. When Mr. James Southard and myself first had the conversation about renting the farm, the season was far advanced, and he said the reason of it was everybody suspected that Russell would redeem the farm. He assured me, that if I rented it, I should be protected to take off the crop. Southard reserved the big-house, the yard, and the spring-house. James Southard bound me up to clean up a brier thicket that was in the corner of the plantation. I found in there a large portion of wood, ready split and corded, said to have been done by Russell or his negroes. Neither Southard or myself knew anything about this wood at the time we bargained. I got the wood. I rented the garden and garden-house out for $400 in cash to Capt. Camp.

James Southard and myself were friendly, and had many conversations through the summer, relative to the redemption of the tract of land which Russell had placed in his hands. He supposed that Russell would never redeem it. I knew nothing, and saw nothing of any writing between him and Col. Russell, more than his say so. I paid my rent to James Southard. In the said conversations during the summer between Southard and myself, I distinctly understood him that I was to be protected in my crop, happen what would, that is, that I was to have my crop whether Russell redeemed the land or not. I knew nothing about Russell until Southard named it himself to me.

Quest. No. 4.—In the various conversations you had with James Southard, did he or not admit that Russell had the right to redeem the land?

Ans'r.—He did in the *fore part* of the season; after August, 1828, there was but little said about it between Southard and myself that I recollect of.

Question 5th.—Did you or did you not have any conversations with D. R. Southard, during the time you lived on said place? If so, state it?

Ans'r.—D. R. Southard and myself had some difficulty about some hogs, which he turned out and off the farm. I told him the place was not his; he said that Russell had not redeemed it, and he considered the place to be his. My allusion was, that my year was not out, and this was the first time that I knew that Daniel set up a claim to the place as being his own.

Question No. 6.—Did or did not D. R. Southard apply to you to give your affidavit in his behalf in this case? if so, how often? and if so, what did he say, and what did you say? State the language of each of you as nearly as you can.

Ans'r.—Mr. D. R. Southard called upon me to know if I could recollect the month or time when I rented that place of James Southard; my answer was that it was in February, 1828. He insisted that it was earlier. Some time after that we met, and he insisted that I was certainly mistaken, and wished me to recollect if it was earlier; my answer was no, and that I was correct as to the time. It was the second time that Southard and myself met, as above stated, that Mr. Southard asked me if I did not think that it was earlier than Feby., 1828, that James Southard and myself bargained, and that he wished to take my affidavit. My answer was that I could not do him any good, and as far as I recollect this ceased the conversation. And further this deponent saith not.

PHILIP RICHARDSON.

UNITED STATES OF AMERICA,
8th Circuit and Kentucky District, sct.

I, William S. Pilcher, Commissioner of affidavits, &c., in and for said Circuit and District, residing in the City of Louisville, certify that the foregoing deposition of Philip Richardson was wholly reduced to writing by me, in the presence of said witness, and in the presence of the counsel of each party, at the time and place, and under the circumstances mentioned in the caption; thereof that I am — counsel nor of kin to either of the parties to this suit, and have no interest directly or indirectly in the event of this suit.

Given under my hand this 17th July, 1852.

WM. S. PILCHER.
U. States Comm'r affi'ts, 8th Circt. K. D.

3546.

Interrogatories.

Gilbert C. Russell, Deft. *ads.* Daniel R. Southard, &c., Complts.	On Bill of Review in Equity.

Interrogatories on the part of Gilbert C. Russell, to take the deposition of Gen. Thomas S. Jesup, and others, to be read as evidence on the trial of the above cause.

Int'y No. 1.—Where did you reside in the years 1827 and 1828?

Int'y No. 2.—Are you or are you not acquainted with George (W.) Hancock, formerly of Virginia, now of Kentucky? How long have you known him?

No. 3.—Where did said Hancock reside in the years 1827 and 1828?

No. 4.—Were you or were you not with said Hancock, or in his society or company, during the years 1827 or 1828? Where did he then reside, and when did he remove to Kentucky?

No. 5.—Was you or was you not in Kentucky during the first half of the year 1827? and was or not said Hancock in Louisville during that time? What time did you leave Kentucky of that year? Could or could not Hancock have been in Louisville then, or about that time without your knowing? Can you or can you not call to mind any facts or circumstances, such as business negotiation, correspondence, or marriage, which could fix conclusively in your mind where Mr. Hancock was in the year 1827, and whether he was or was not in Kentucky during that time.

No. 6.—Did or did you not visit Virginia from Kentucky about the month of September, 1827? If yea, did you see Mr. Hancock during that visit, and where was he?

Int. No. 7.—Did or did not Col. Gilbert C. Russell apply to you for an advance of money in the year 1827? If yea, please state what security, if any, he offered you.

No. 8.—Did you or did you not receive a letter from D. R. Southard, during the past year, requesting your affidavit? If yea, please state for what purpose said affidavit was wanted. And what response did you make to said letter? If in your power, please file it with your deposition, with your name endorsed upon its face.

No. 9.—Do you know or can you say anything of benefit to the parties to this, complainant or defendant, or either of them? If yea, please declare fully and at large in your answer, as though you were particularly interrogated thereto.

MOREHEAD, MONROE & STEWART,
For Russell.

A copy. Attest,

JNO. A. MONROE,
C. C. C. K. D.

Deposition of Thomas S. Jesup.

UNITED STATES OF AMERICA,
District of Columbia, sct.

Be it remembered, that on the thirtieth day of March, in the year one thousand eight hundred and fifty-three, I, Charles De Selding, a Commissioner duly appointed for the District of Columbia, under and by virtue of the Acts of Congress, entitled, "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Acts of Congress entitled, "A Act in addition to an Act entitled, 'An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1, 1817, and the act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be, and personally appear at my office, in the city of Washington, in the District of Columbia aforesaid, General Thomas S. Jessup, and Col. Abram R. Woolley, to testify, and the truth to say on the part and behalf of the defendant in a certain Bill of Review in Equity, now depending and undetermined in the Eighth Circuit Court of the United States, in and for the Kentucky District, wherein Daniel R. Southard and others are complainants, and Gilbert C. Russell is defendant, on the said Bill of Review.

And the said Thomas S. Jesup (the said Abram R. Woolley being then not present), being about the age of sixty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said Thomas S. Jesup, and he did thereupon depose and testify, and say as follows, viz.:

To the first interrogatory, he answereth,

1. I belonged to the army of the United States, and my station was at the city of Washington.

To the second interrogatory, he answereth,

2. I am acquainted with George Hancock; I think I first saw him at Locust Grove, near Louisville, K'y, in the spring or summer of 1819. I was present at his marriage in the summer or autumn of that year.

To the third interrogatory, he answereth,

3. He resided in Montgomery County, Virginia, at a farm called Fotheringay, on the Roanoke River, until the autumn of 1828.

To the fourth interrogatory, he answereth,

4. I went to Kentucky in the spring of 1827 with my family.

Mr. Hancock then resided in Virginia; but was on a visit to his mother-in-law, the late Mrs. Lucy Croghan, at Locust Grove beforementioned. My wife and Mrs. Hancock were sisters. My family spent a part of the summer and autumn of 1828 at Mr. Hancock's residence in Virginia. I left them there, I think, in July, and joined them there some time in October. On my return, I found Mr. Hancock preparing to remove his family to Kentucky. I set out with my family, on my return to Washington, late in October, or early in November, and Mr. Hancock departed soon after, as I understood and believe, with his family to settle in Kentucky.

To the fifth interrogatory, he answereth,

5. I was in Kentucky from some time in April to some time in July, 1827, with the exception of occasional visits on business to Indiana. It was, I think, on that visit to Kentucky I found Mr. Hancock and his wife at Locust Grove, the residence of my mother-in-law. Locust Grove is about six miles from Louisville. I cannot remember at this late day whether Mr. Hancock was at Louisville; but I think he was with his wife at the Clerk's Office to acknowledge a deed. He did not remain long in Kentucky after my arrival. I must have left Kentucky on my return some time in July, for I find, by referring to the records of my office, that I was here on the 7th of August of that year.

To the sixth interrogatory, he answereth,

6. I was not in Virginia in 1827, and I do not remember to have seen Mr. Hancock at any time during that year after his departure from Kentucky.

To the seventh interrogatory, he answereth,

7. I do not remember to have seen Colonel Gilbert C. Russell in Kentucky in 1827. He was the senior captain of the 7th regiment of Infantry when I joined it as a 2d Lieut., and from that circumstance, I would, no doubt, have seen him had we been in Louisville at the same time. He certainly did not apply to me for a loan or advance of money.

To the eighth interrogatory, he answereth,

8. I do not remember to have received such a letter from Mr. Southard, nor do I believe that I did.

To the ninth interrogatory, he answereth,

9. Knowing nothing in regard to the matters in controversy between the parties, beyond what is disclosed by the interrogatories propounded to me, and having answered those preceding this as fully as my recollection of the matters referred to, at this late day, has enabled me, I have nothing further to add.

THO. S. JESUP.

Deposition of A. R. Woolley.

Deposition of Abram R. Woolley.'

And on the 31st day of March, A.D. 1853, personally appeared at my office, in the city of Washington and district aforesaid, Abram R. Woolley, a witness named in the preceding caption, being about the age of seventy years, and having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matters of controversy aforesaid, I did carefully examine the said Abram R. Woolley, and he did thereupon depose, testify, and say as follows, viz.:

To the first interrogatory, he sayeth,

1. I belonged to the United States Army. My station was Jefferson Barracks, Missouri, in the years 1827 and 1828. My residence was at those barracks with my regiment. A portion of the year 1827, I spent in Kentucky and Virginia, part of the summer and fall of that year. On the thirteenth of September of that year, I was married to Caroline L. Preston, as will appear by the certificate hereto annexed and marked A.

To the second interrogatory, he sayeth,

2. I am acquainted with George Hancock. I have known him since September, 1827, when I visited his residence on Roanoke river, Virginia, accompanied by my newly married wife, who was his niece.

To the third interrogatory, he sayeth,

3. As I have stated, at his farm on the Roanoke.

To the fourth interrogatory, he sayeth,

4. I have already stated that I visited him with my wife, spending a few weeks with my him, and then returned to Louisville, where, after sojourning for a few weeks, I left for Jefferson Barracks, taking my wife with me. He said Hancock resided, as I have stated, at Roanoke. I do not when he removed to Kentucky. He was residing at Locust Grove in 1830.

To the fifth interrogatory, he sayeth,

5. I arrived in Louisville in July, 1827. After my marriage to Miss Preston, I proceeded on a visit to Hancock and family on Roanoke, Virginia. I visited Mrs. Preston, the sister of Hancock, daily either in Louisville or the vicinity of Middletown, in 1827, but I did not hear, or see, or learn of Mr. Hancock's being there. I have already answered everything thing pertinent to this part of the interrogatory. Had he been in Louisville I would have known it, and, as I have already stated, Hancock resided in Virginia when I visited him after my marriage with his niece. I had no business or correspondence with him, simply the marriage brought us together. I sojourned a short time in Virginia. Mr. Hancock was not in Ken-

tucky to my knowledge, nor do I believe he was there. I will repeat that I was married on the 13th of September, 1827, and left the day after for Virginia.

To the sixth interrogatory, he sayeth,

6th. I have already answered, and cannot make my reply more particular.

To the seventh interrogatory, he sayeth,

7th. Col. Russell did apply to me for a loan or advance of money connected with a proposition of his to sell to me a farm, he had recently purchased from Dr. Floyd. Its situation was immediately opposite to the Preston property, on the Bardstown road. Russell pointed out to me the advantages of the purchase, from its being opposite the Preston property, a road dividing it. Russell proposed to sell me the estate; that he needed an advance of money for his immediate necessities, but a large portion of the purchase might remain unpaid, giving me my own time of payment; the only security he would ask would be a lien on the property and an hypothecation of my pay accounts. I stated to Col. Russell that, however eligible the purchase might be, I could not purchase; I had nothing to advance, and my monthly pay as a Lieut. Colonel in the army would be necessary for the expenses of myself and family. I do not recollect of any specified sum he mentioned as the purchase-money. My impression is that it was not proposed by Col. Russell to sell the farm to me at a reduced price. If it had been in my power to have purchased, I should have given to Col. Russell the amount he paid for the farm. I had conversations with Mrs. Preston, my mother-in-law, and with Genl. Robert Breckenridge as to the value of the property. They, if I recollect right, considered the property worth what Col. Russell asked for it. I had no idea that Col. Russell was going to sell it at a great sacrifice. If I had taken the property I would have paid Col. Russell what he had paid to Floyd. It was many months after that I heard that Col. Russell had sacrificed the property to the Southards.

To the eighth interrogatory, he sayeth,

8. Southard wrote to me in New Mexico. I left for the States before I received his letter. The day I received it I was in Washington City. I saw Col. Russell, who had previously mentioned that he had written to me in New Mexico in relation to the suit between him and Southard in the Supreme Court of the United States. I also stated to Mr. Morehead, one of the attorneys of the *case*, that Southard had written to me on the same subject, and had called my attention to a mistake I had made in my testimony in reference to the time I had seen Mr. Wing, the agent or overseer of Col. Russell, in Kentucky. I had made my deposition as full and as perfect, after a long lapse of time, as could be expected on the points upon which I was then interrogated. I could not make it absolutely certain in

every particular; in relation to a particular date, a mistake might have been made. I supposed, as a bill of review had been filed, that if there was any material mistake made, my deposition would be taken anew, when I would have it in my power to correct any mistake. As to the letter, there is nothing rendering it necessary for me to produce it. There was no disclosure in it which either party could avail themselves of having any bearing in the suit, neither in Southard's letter to me nor Col. Russell's.

To the ninth interrogatory, he sayeth,

9th. Heretofore in giving my evidence and in answering interrogatories, I have endeavored to exhaust the subject, and give direct and pertinent answers. I do not know that I can say anything more on the subject, nor throw any light thereon, that would be of any benefit to either party. I arrived about the 8th July, 1827, in Kentucky, and Col. Russell arrived a few days after. We stopt together at Washington Hall, Louisville, Kentucky. From my long acquaintance with him, if he had been there previously, I would have known it. I left him there when I went to Virginia after my marriage. George Hancock was not in Kentucky after my arrival there, early in July, nor was he there up to the middle of September, when I left for his house on Roanoke, where I found him. I feel confident I arrived at Louisville a day or two before Col. Russell did. I would further add, that I never saw Hancock and Col. Russell both together in Kentucky, until the year 1830, and further affiant sayeth not.

A. R. WOOLLEY.

Marriage Certificate.—Part of A. R. Woolley's Deposition.

Be it remembered, that on the twelfth day of September, 1827, Abram R. Woolley obtained from the Clerk of the Jefferson County Court (who is duly authorized by law to issue the same), a license to marry Caroline L. Preston, who were duly married, as appears from the marriage register of Jefferson County, for the year 1827. An extract from which is as follows:

Marriage Register for 1827.

Sept. 12.	Abraham R. Woolley to Caroline L. Preston.	The said Caroline being the daughter of Caroline J. L. Preston, who consents hereto.
Married 13th Sept., 1827. License returned by Grd. Blackburn.		

In testimony whereof I have hereunto set my hand and affixed my seal of office, this twentieth day of January, 1853.

CURRAN POPE, *Clk.*
By THOMAS A. MORGAN, *D. C.*

UNITED STATES OF AMERICA,
District of Columbia.

I, Charles De Selding, Commissioner as aforesaid, under and by virtue of the several acts of Congress in such cases made and provided, do hereby certify, that the reason for taking the foregoing deposition, and the fact is, that the said witnesses reside more than one hundred miles from the place where said cause is to be tried.

I further certify, that on the thirtieth and thirty-first days of March, A. D. 1853, I was attended by the witnesses, who were of sound mind and lawful age; and the witnesses were by me first carefully examined, and cautioned, and sworn to testify the whole truth. And the deposition of Thomas S. Jesup was by him reduced to writing, and that of Abram R. Woolley reduced to writing by myself; and after the same was carefully read to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession, for the purpose of sealing it up, and directing it with my own hand to the Court for which the same was taken, and depositing the same in the post office.

And I do further certify, that I am not of counsel nor attorney for either of the parties in deposition and caption named, nor in any way interested in the event of the cause named in said caption.

[L. S.] In testimony whereof I have hereunto set my hand and seal this thirty-first day of March, in the year one thousand eight hundred and fifty-three, and the year of the independence of the United States, the seventy-seventh.

CHARLES DE SELDING,
U. S. Commissioner.

The following are the proceedings had in the cause of Gilbert C. Russell *agst.* Daniel R. Southard and others, since the filing of the mandate and opinion of the Supreme Court of the United States, and which are made part of this record.

UNITED STATES OF AMERICA.
8th Circuit and Kentucky District (*18th May*), *May Term*, 1852.

GILBERT C. RUSSELL, Complainant,
vs.
DANIEL R. SOUTHARD and others, Defendants.
} In Chancery.

This day came Gilbert C. Russell, by Charles S. Morehead, his counsel, and presented and offered to be filed the mandate of the Supreme Court of the United States, together with the opinion of the Court in it mentioned, pronounced, and and awarded on the appeal of the aforesaid Gilbert C. Russell from the decree of this Court herein, at the May Term, 1849, whereby the cause is remanded to this Court, with directions to carry into effect the opinion of that Court, &c. And the same are filed accordingly.

The mandate is in the words and figures which follow.

Mandate.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the Honorable the Judges of the Circuit Court of the United States for the District of Kentucky, greeting:

Whereas, lately in the Circuit Court of the United States for the District of Kentucky, before you, or some of you, in a cause between Gilbert C. Russell, Complainant, and Daniel R. Southard, Samuel D. Tompkins, and William C. Bullitt, and William H. Pope, administrators of James Burks, deceased, William L. Thompson, guardian to James Burks, Samuel Burks, Charles Burks, and Nancy Burks, infant children of James Burks, deceased, Matilda Burks, and John Burks, heirs of James Burks, deceased, defendants in Chancery, the decree of the said Circuit Court was in the following words, viz.:

It is ordered and decreed by the Court, that the complainant's bill be and the same is hereby dismissed; and that the complainant pay to the defendant their costs herein expended, as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the Act of Congress in such case made and provided. And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-one, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel. On consideration whereof, it is the opinion of this Court, that the conveyance by Gilbert C. Russell, the complainant, to James Southard, and dated the 24th day of September, 1827, as set out in the transcript of the record, was a mortgage, and that said Russell is entitled to redeem the same; whereupon it is now here ordered, adjudged, and decreed by this Court, that the decree of the said Circuit Court in this cause be and the same is hereby reversed, with costs, and that the said complainant recover against the said defendants, two hundred and ninety-six dollars and thirty cents for his costs herein expended, and have execution therefor.

And it is further ordered, that this cause be and the same is hereby remanded to the said Circuit Court for further proceedings to be had therein, in conformity to the opinion of this Court, and as to law and justice may appertain. *Dec.* 31.

You therefore are hereby commanded, that such execution, and further proceedings be had in said cause, in conformity to the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-one.

Costs of complainants.

Clerk,	$276 30
Attorney,	20 00

$296 30 taxed by William Thomas Carrol, Clerk of the Supreme Court of the United States.

And afterwards, at a subsequent day of the May Term of the Court aforesaid, to wit, the 19th day of May, 1852,

Decree.

Came again the complainant, by C. S. Morehead, and B. Monroe, Esq's, his counsel, and the defendants, by S. S. Nicholas, Esq., their counsel, and

In pursuance of the opinion and mandate of the Supreme Court of the United States,

It is now declared and decreed, that the conveyance from Gilbert C. Russell to James Southard, bearing date the 24th day of September, 1827, in the record contained, and in the opinion and mandate mentioned, was a mortgage, and that said Russell is entitled to redeem the same. In further pursuance of the opinion of the Supreme Court, that the case is not now in a condition for a final decree in respect to the other defendants, the cause is remanded to the rules.

It is agreed by the counsel of the parties, that Samuel D. Tompkins may, on the next rule day, or the next thereafter, offer to have filed an amended answer to complainant's bill, as if now offered, so that his rights to have the same filed, may be objected to by complainants, and the matter decided by the Judge as if the motion were now made in Court.

And afterwards, at a subsequent day of said term, and on the 29th day of May, 1852,

Came the complainant, by J. B. Stewart, &c., his counsel, and read and moved to have filed, the affidavits of William H. Pope, in proof that the affiant had been satisfied his claim in or upon the land in controversy, and now abandoned what he had set up and insisted on in his answer.

And therefore, and on the grounds stated in writing, moved the Court to set aside the order made at a former day of this Term, remanding this cause to the rules for further preparation.

And the counsel having been heard, It is ordered that the complainant's motion be and the same is hereby overruled.

Motion to appoint a Receiver.

And on the same day, on motion of the complainants, by C. S. Morehead, Ben. Monroe, and J. B. Stewart, Esq's, his counsel on his petition, and the affidavits thereto, which are filed,

It is ordered that the defendants show cause here, on Tuesday, the 8th day of June next, why a receiver of the property which was in controversy—a tract of 216 acres of land, near Louisville, conveyed by the deed of G. C. Russell to James Southard, dated September 24th, 1827, and in the decree mentioned,—shall not be appointed, with direction to demand and receive of the tenants in possession, the rents and profits thereof due and to become due, and to do what else may be ordered by the Court in the premises.

Let a copy of this order be served on the defendants, Daniel R. Southard, Samuel D. Tompkins, William C. Bullitt, and William H. Pope, Matilda Burks, John Burks, William L. Thompson, and James Guthrie, and also on the several tenants in possession of the said tract of land.

The following are the papers referred to in the foregoing orders.

Wm. H. Pope's Affidavit.

Affidavit of William H. Pope.

GILBERT C. RUSSELL,
vs.
DANIEL R. SOUTHARD, and others.
U. S. Court,
Kentucky District.

Personally appeared before the undersigned William S. Pilcher, Commissioner, &c., &c., William H. Pope, who, first being duly sworn upon oath, states, that he was a party defendant to the above suit, brought by Gilbert C. Russell *vs.* Daniel R. Southard and others, as will more fully appear by reference to his answer filed in said cause, wherein he appears as executor of his father, William Pope, dec'd, as the representative of a judgment for $ due one Handley, deceased, to satisfy which, the said claims after execution issued,   acres of the said Southard farm was sold, and the said William Pope became the purchaser; but that since the institution of this suit, and since the filing of his answer as aforesaid, the said purchase-money has been fully paid and satisfied, and that he, said Pope, now no longer has or asserts any claim or lien upon said land now in controversy, and considers himself no longer a necessary party to said suits, and requests that the Court will take this statement either as an amended answer, or as acknowledgment of full satisfaction for any and all claim on or against the land in controversy, set forth in his answer as aforesaid, upon the premises, as there set forth, he hereby confessing himself fully satisfied, and directs no further proceedings in behalf of himself and those whom he represents: and further saith not

W. H. POPE.

STATE OF KENTUCKY,
United States of America, sct.

I, William S. Pilcher, Commissioner of the United States, in and for said State and District, residing in the City of Louisville, certify that W. H. Pope is well known to me, that he read, altered, corrected, and signed the within affidavit in my presence, and duly swore to the same before me. That I am of kin to neither party to the within entitled suit, nor of counsel, nor interested in the event thereof.

Given under my hand, as Commissioner of affidavits, &c., at my office in the City of Louisville, this 25th May, 1852.

WM. S. PILCHER,
Comm'r of Affdvts. &c., U. S. Ky. District.

The following are the grounds in writing filed upon the motion referred to in the foregoing order:

GILBERT C. RUSSELL
vs.
DANIEL R. SOUTHARD.
U. S. Court,
Kentucky District.

The complainant, Gilbert C. Russell, moves the Court to set aside so much of the order made at a previous day in this cause, as remands the parties of said record, pertaining to the sub-purchases, back to the rules for further preparation, for the following reason:

1st. That he files herewith, the affidavit of William H. Pope, showing that the claim and interest which he held and represented in and to said land, has been, since he was made a party hereto, but before the trial of the cause in the Court below, paid off, and that he is no longer party to the suit, and directs no further proceedings be had in his behalf.

2d. That the defendants, Burks' heirs, have taken no steps since the institution of this suit, to make any preparation, having taken no proof, nor have they in anywise asked for leave to take any, which is clearly presumptive that they do not wish to take any, but depend upon the strength of their mortgage as established; complainant took one deposition as to them, and has no more to take. And further, that the question pertaining to that branch of the cause is merely one of notice, which, if not established, their mortgage must hold good after the exhaustion of the other property; which fact, he insists, is now ready for final action, as will appear by reference to the record.—See bill, Answer of Burks' heirs and Guardians, and deposition of Longest, pages 5, 17, 62, 175, and 202.

3d. That defendant, Tompkins, made all the preparation he deemed necessary, and took all the proof he wanted when this cause was first prepared; complainant took no proof as to him, and has none to take. The only point as to him is, whether he is in law a purchaser or not. All after proceedings is such as will properly belong to a commissioner to ascertain the value of improvements and erections,—provided he be not a purchaser; if he is a purchaser, it would be money and time uselessly expended to have further inquiry made as to when improvements were made at this time. He stands before the Court upon his answer, and such proof as he deemed proper to offer, as will appear by reference to Amended Bill, 175; Tompkins' Answer, 178; Deposition of Meriwether, 200; W. Tompkins, 249; McGehee, 251; Peter Smith, 248.

4th. That both Tompkins and Burks appeared by counsel, and had their cause argued in full in 1849, and have never at any time since pretended any want of preparation.

6th. That if Burks' heirs should be regarded as precluded from their lien as mortgagees, by proof of notice to them or their ancestor, then it would be both useless and burdensome to require the complainant to await or abide the taking of an account, to ascertain the amount of property herein recovered, as complainant could have no interest in that matter.

7th. Compl't protests against the parties named being allowed to take proof, or make further pleadings or answer, after having neglected to do so heretofore, and since the position and interest of parties has assumed a different attitude.

8. Compl't positively apprehends and believes that if said parts of this cause are in anywise held open, that it will furnish an inlet through which to practise the grossest frauds upon his rights, as he believes that said parties will, and have conspired with the said Southard, to frustrate and defraud this compl't; and that any further preparation attempted by them would not be to the point at issue with them and compl't, but to seek, in some way thereby, to have it more to the interest of the said Southard, as he has reason to believe that such things have already been attempted. Compl't therefore moves, petitions, and prays this Court, that after the great lapse

of time this matter has been litigated, not now to let him be subjected to any such frauds, practises, or combinations.

MONROE, MOREHEAD, STEWART, &c.

The following is the Petition and Affidavits referred to in the foregoing order.

Petition and Affidavit.

To the Hon'bl. the Circuit Court of the United States for the District of Kentucky.

Your petitioner, Gilbert C. Russell, respectfully states, that in Sept., 1827, he mortgaged to James Southard, now deceased, two hundred and sixteen acres of land, lying adjacent to Louisville, for the sum of $4929 81, and placed the said Southard in possession thereof, which he continued to hold during his life; that he died, devising the same to one Daniel R. Southard, who has had the possession thereof ever since the death of said James. That in the year 1847, your petitioner filed his Bill in Chancery, before this Hon'bl. Court, to have the privilege decreed to him of redeeming said land; that said bill was filed against said D. R. Southard, as devisee, and against S. D. Tompkins, who, it was alleged, had bought about 30 acres of the 216, and against others, claiming to have mortgages upon said land, given by D. R. Southard. That the Court dismissed your petitioner's bill, and he prayed an appeal to the Supreme Court of the United States, which last named Court reversed the opinion of this Court, and decided that your petitioner had the right to redeem said land, and the mandate of that Court has been entered in this Court, at the present term, and a decree of this Court has been entered in conformity to that mandate of the Supreme Court.

It was further adjudged by the Supreme Court that your petitioner should pay to D. R. Southard $4929 81, the mortgage debt, with interest from the filing of his bill in this Court, which was the day of September, 1847, and that Southard should pay and account for the rent of the land for the same period of time. Now your petitioner states, that the interest and principal of said mortgage debt, up to this time does not exceed $6354 81, and that the rents of the land, during the pendency of the suit and up to the present time, will greatly exceed the said mortgage money and interest, and that the mortgage debt and interest is wholly extinguished, and a balance of about $1500 is due to your petitioner, estimating the rent by the proof in the record, and he states that he verily believes that the rents of the land have greatly increased, and they are now higher than they were when the depositions were taken; and that, upon a fair adjustment of the account of mortgage money and interest on the one side, and rents upon the other, that a large balance of several thousand dollars will appear to be due the petitioner.

He is informed that D. R. Southard is now insolvent, and believes it to be true, that he has none or very little property subject to execution, and that he has rented out the land for the present year, and that he is unwilling, in justice to himself, to stand by and see the rent for this year, and in future, if the suit shall be farther procrastinated, pass into the hands of D. R. Southard. Your petitioner, therefore, prays that the Court appoint a receiver, to receive the rent for the present year from the lessee or lessees of Southard, and that Southard be enjoined from receiving them; and also an auditor to audit and adjust the accounts of mortgage debt and interest on the one hand, and the value of rents since the institution of this suit, and to report the same to this Court. He further states that there are, as appears in the case, mortgages upon the land, given by D. R. Southard, which mortgage covers other property, which has in part been already paid off in part, and it is proper to ascertain the balance due upon the same.

G. C. RUSSELL, *by Counsel,*
MOREHEAD, STEWART, & MONROE.

KENTUCKY, to wit:

Joseph B. Stewart this day in open Court made oath, that the facts stated in the foregoing petition, are many of them personally known to him to be true, and that as to the other facts he has heard them spoken of, and verily believes them to be true. Said Stewart further states, that he is the agent and attorney of G. C. Russell, and that the latter is absent from the State of Kentucky, this 29th May, 1852.

JOS. B. STEWART.

Sworn to in open Court by Jos. B. Stewart, May 29th, 1852.
JNO. A. MONROE, *Clerk.*

Copy Order.

Copy of Order and Return.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, sct.

(Saturday, May 29th, 1852.) May Term, 1832.

GILBERT C. RUSSELL, Complainant, *against* DANIEL R. SOUTHARD and others, Defendant.	In Chancery.

On motion of the complainant, by C. S. Morehead, Ben. Monroe, and J. B. Stewart, Esq'rs, his counsel, on his petition and the affidavit thereto, which are filed—It is ordered, that the defendants show cause here on Tuesday, the 8th day of June next, why a receiver of the property which was in controversy—the tract of 216 acres of land, near Louisville, conveyed by the deed of G. C. Russell to James Southard, dated September 24th, 1827, and in the decree mentioned—shall not be appointed, with directions to demand and receive of the tenants in possession, the rents and profits thereof, due and to become due, and to do what else may be ordered by the Court in the premises.

Let a copy of this order be served on the defendants, Daniel R. Southard, Samuel D. Tompkins, William C. Bullitt, and William H. Pope, Matilda Burks, John Burks, William L. Thompson, and James Guthrie, and also on the several tenants in the possession of the said tract of land.

A copy. Attest,
JNO. A. MONROE,
C. C. C. K. D.

Marshal's Return, to wit:

June 1st, 1852,—Executed on James Guthrie, Esq., by delivering him a true copy of the within order, and explaining the same to him, also, on Wm. H. Pope, and explaining the same to him.

June 2d.—Executed on Daniel R. Southard, and explaining the same to him, also on W. T. Haggin, and explaining the same to him, he being the attorney for Samuel D. Tompkins, who was out of the State at the time; also, on the 4th day of June, executed on Matilda Burks, John Burks, and William C. Bullitt, by delivering to each of them a true copy of the within order, and explaining the same to them; also, on the same day, executed on Peter Smith, and William Dillon (being the tenants in possession of said tract of land), by delivering to each of them a true copy of the within order, and explaining the same to them; also, on the 5th day of June, 1852, executed on William L. Thompson, by delivering a true copy of the within *report*, and explaining the same to him.

JAMES S. SPEED,
U. S. M., District of Ky.

Receiver Appointed.

And afterwards, at a subsequent day of said Term, to wit, on the 8th day of June, 1852,

Came again the complainant, by B. Monroe, Esq., his counsel, and it appearing that a copy of the order made herein, at the present term, requiring the defendants to show cause why a receiver should not be appointed, has been duly served on the parties, and they not having shown any cause against such order,

On motion of the complainant, by Ben. Monroe, Esq., his counsel, It is ordered, that a receiver of the lands mentioned in the above recited order, and its rents and profits, which were, and remain the subject of litigation, shall be appointed.

Joshua F. Speed, is appointed the receiver.

The receiver is directed to demand and collect of the tenants in possession of the land, all the rents due and which were due from them, on the day the notice of this motion was executed on them, and which shall hereafter become payable.

In case of the expiration of any of the leases, by which any tenant holds, the receiver is directed to take possession of the premises, and lease the same for such time as he may deem expedient, not extending beyond the present year, and to receive the rents which shall accrue thereon. He will provide for keeping the property in repair, and deposit all the money he may receive, in the Bank of Kentucky, to the credit of the Court.

Dismissed, as to Pope and Guthrie.

And on the same day again came the complainant, by Ben. Monroe, and J. B. Stewart, Esq'rs, his counsel, and the defendants, William H. Pope and James Guthrie, by Hewitt, their counsel, and on motion of the defendant, William P. Pope, by his counsel, the claim of him the said Pope, in and upon the property in controversy, is dismissed, and he is dismissed as a defendant to complainant's bill.

And on motion of the said James Guthrie, by his counsel, the claim of him (Guthrie) upon the property in controversy is dismissed, and he is dismissed as a defendant to complainant's bill.

And on a subsequent day of said Term, to wit, the 14th day of June, 1852,

Acknowledgment of payment of Costs.

Came again the complainant, Gilbert C. Russell, by Charles S. Morehead, Esq., his counsel, and in open Court acknowledged the payment to him, of the sum of two hundred and ninety-six dollars and thirty cents, by the defendants, in satisfaction of the costs decreed to said Russell, against the defendants, in the Supreme Court of the United States, and certified by the Clerk of said Court.

Master Appointed.

And on the same day came the complainant, by Ben Monroe and C. S. Morehead, Esq'rs, his counsel, and the defendants, by S. S. Nicholas, Esq., their counsel, and on the petition of the complainant, by his counsel, which is filed,

It is ordered, that a master do take an account between the complainant and the defendant, Daniel R. Southard, of the interest on the sum of $4,921 81½, the amount expressed in the deed of conveyance of Russell to Southard, dated 24 day of September, 1827, which it has been determined was a loan secured by the conveyance, from the 23 day of September, 1847, when the Bill was filed, and of the rents and profits of all the land conveyed by that deed, from the same period up to the date of the deed of conveyance from Southard to Samuel D. Tompkins, on the 30th day of June, 1846, and afterwards of the remainder of the land, excluding the parcel conveyed to Tompkins, up to the day of the commencement of the rents which the receiver of this Court, appointed in the cause, has been directed to demand and collect of the tenants.

William S. Pilcher is appointed the master.

The following is the petition referred to in the foregoing order:

Petition.

RUSSELL *vs.* SOUTHARD, &c., in Chancery.

To the Hon'ble the Circuit Court of the United States for the Kentucky District.

Your petitioner, Gilbert C. Russell, respectfully states, that by the decree of the Supreme Court of the United States in the above-named suit, he considers that such principles are settled in regard to his rights, and the said Daniel R. Southard and the mandate of that Court entered in this Court, and such decree rendered thereupon as will show that from the facts appearing in the record and principles settled, that your petitioner should be placed in the posthem; also, on the same day, executed on Peter Smith, and William Dillon (being the tenants in possession of said tract of land), by delivering to each of them a true copy of the within order, and explaining the same to them; also, on the 5th day of June, 1852, executed on William L. Thompson, by delivering a true copy of the within *report*, and explaining the same to him.

JAMES S. SPEED,
U. S. M., District of Ky.

Receiver Appointed.

And afterwards, at a subsequent day of said Term, to wit, on the 8th day of June, 1852,

Came again the complainant, by B. Monroe, Esq., his counsel, and it appearing that a copy of the order made herein, at the present term, requiring the defendants to show cause why a receiver should not be appointed, has been duly served on the parties, and they not having shown any cause against such order,

On motion of the complainant, by Ben. Monroe, Esq., his counsel, It is ordered, that a receiver of the lands mentioned in the above recited order, and its rents and profits, which were, and remain the subject of litigation, shall be appointed.

Joshua F. Speed, is appointed the receiver.

The receiver is directed to demand and collect of the tenants in possession of the land, all the rents due and which were due from them, on the day the notice of this motion was executed on them, and which shall hereafter become payable.

In case of the expiration of any of the leases, by which any tenant holds, the receiver is directed to take possession of the premises, and lease the same for such time as he may deem expedient, not extending beyond the present year, and to receive the rents which shall accrue thereon. He will provide for keeping the property in repair, and deposit all the money he may receive, in the Bank of Kentucky, to the credit of the Court.

Dismissed, as to Pope and Guthrie.

And on the same day again came the complainant, by Ben. Monroe, and J. B. Stewart, Esq'rs, his counsel, and the defendants, William H. Pope and James Guthrie, by Hewitt, their counsel, and on motion of the defendant, William P. Pope, by his counsel, the claim of him the said Pope, in and upon the property in controversy, is dismissed, and he is dismissed as a defendant to complainant's bill.

And on motion of the said James Guthrie, by his counsel, the claim of him (Guthrie) upon the property in controversy is dismissed, and he is dismissed as a defendant to complainant's bill.

And on a subsequent day of said Term, to wit, the 14th day of June, 1852,

3554.

Acknowledgment of payment of Costs.

Came again the complainant, Gilbert C. Russell, by Charles S. Morehead, Esq., his counsel, and in open Court acknowledged the payment to him, of the sum of two hundred and ninety-six dollars and thirty cents, by the defendants, in satisfaction of the costs decreed to said Russell, against the defendants, in the Supreme Court of the United States, and certified by the Clerk of said Court.

Master Appointed.

And on the same day came the complainant, by Ben Monroe and C. S. Morehead, Esq'rs, his counsel, and the defendants, by S. S. Nicholas, Esq., their counsel, and on the petition of the complainant, by his counsel, which is filed,

It is ordered, that a master do take an account between the complainant and the defendant, Daniel R. Southard, of the interest on the sum of $4,921 81½, the amount expressed in the deed of conveyance of Russell to Southard, dated 24 day of September, 1827, which it has been determined was a loan secured by the conveyance, from the 23 day of September, 1847, when the Bill was filed, and of the rents and profits of all the land conveyed by that deed, from the same period up to the date of the deed of conveyance from Southard to Samuel D. Tompkins, on the 30th day of June, 1846, and afterwards of the remainder of the land, excluding the parcel conveyed to Tompkins, up to the day of the commencement of the rents which the receiver of this Court, appointed in the cause, has been directed to demand and collect of the tenants.

William S. Pilcher is appointed the master.

The following is the petition referred to in the foregoing order:

Petition.

RUSSELL *vs.* SOUTHARD, &c., in Chancery.

To the Hon'ble the Circuit Court of the United States for the Kentucky District.

Your petitioner, Gilbert C. Russell, respectfully states, that by the decree of the Supreme Court of the United States in the above-named suit, he considers that such principles are settled in regard to his rights, and the said Daniel R. Southard and the mandate of that Court entered in this Court, and such decree rendered thereupon as will show that from the facts appearing in the record and principles settled, that your petitioner should be placed in the possession of all that part of the 215 or 216 acres of land which is not in the possession of Samuel D. Tompkins. He states that he believes that the rents and profits of the land which he by said decree has been allowed the privilege to redeem, which have accrued to and been enjoyed by def't, D. R. Southard, do now exceed by a considerable sum the sum advanced by the mortgagee and its interest, as decreed by the opinion of the Supreme Court and of this Court, rendered in conformity to the mandate of said Court. He, therefore, conceives that he is entitled to the immediate possession of the premises, except that part in possession of S. D. Tompkins; and that the fact may be made clearly to appear, he prays that the Court will appoint a commissioner to audit and state the accounts between himself and said Southard, as to rents and profits, and mortgage debt and interest, and report the same to this Court, and such other estimates as the Court may adjudge necessary.

G. C. RUSSELL,
By Morehead, Monroe, &c., his Counsel.

MR. DANIEL R. SOUTHARD.

SIR,—Take notice, that on Monday, the 14th day of this month, I shall present the foregoing petition to the Circuit Court of the United States for the Kentucky District at the capitol, in Frankfort, and request the action of the Court upon it.

Yours respectfully, G. C. RUSSELL,
By Morehead, Monroe, &c., his Counsel.

Return, to wit:

Executed by delivering to Daniel R. Southard a true copy of the within petition, and explaining the same to him, June 10th, 1852.

JAMES S. SPEED,
U. S. M., K. D.

And on the next day of said Term, to wit, the 15th day of June, 1852,

Order filing answer, S. D. Tompkins.

Came the defendant, S. D. Tompkins, by S. S. Nicholas, Esq., his counsel, and presented and offered to have filed his separate amended answer herein, which is filed.

Which answer is in the words and figures following:

Circuit Court, U. S., Ky. District.

Amended Answer, Saml. D. Tompkins.

GILBERT C. RUSSELL,
vs.
SOUTHARD, TOMPKINS, &c.

The defendant, Samuel D. Tompkins, by way of amendment to his answer, herein says, that before the institution of this suit, and before he had any notice of complainant Russell's claim, he had put lasting improvements on the thirty-one acres of land bought of Southard to the value of $9000. Since then, relying upon advice that he was amply protected against Russell's claim by the fact of his being a purchaser for a valuable consideration without notice, he has made other improvements thereon to the value of between $2000 and $3000, and among them a fence, costing about $400, which was indispensable to the protection of the property. Though the land has greatly enhanced in value since he made his purchase and received the conveyance, yet the improvements made by him before notice of Russell's claim largely exceed even the present value of the land. As a purchaser for a valuable consideration without notice he again insists upon his right to retain the property, and relies upon the great lapse of time and the statute of limitations. But if the property should be taken from him, he then prays that it may be refunded, the $1500 paid by him to Southard with interest, together with the amount expended by him in improvements.

SAML. D. TOMPKINS.
HAGGIN & NICHOLAS,
For Tompkins.

This — day of June, 1852, the foregoing was acknowledged and sworn to before me by Saml. D. Tompkins.

JOS. CLEMENT,
J. P. J. C.

Leave to retake Deposition of McGehee.

And afterwards, at a subsequent day of said term, to wit, the 5th day of July, 1853,

Came the defendants, by S. S. Nicholas, Esq., their counsel, and the complainant, by C. S. Morehead, Esq., his counsel; and, on the motion of the defendant, Tompkins, leave is given them to retake the deposition of Hiram McGehee, heretofore taken and filed in this cause, for the purpose of proving when the improvements were made upon the land, and their value.

Replication to Tompkins' Amended Answer.

And afterwards, to wit, at Rules, held in the clerk's office, on Monday, the 6th day of September, A. D. 1852.

Came the complainant, by C. S. Morehead and J. B. Stewart, Esqrs., his counsel, and for replication to def't Tompkins' amended answer, says, that the allegations of his bill are true, and that the statements contained in said amended answer, so far as they deny or contradict the allegations in said bill, are untrue; wherefore, &c.

Order Filing Interrogatories.

And afterwards, at Rules, held in the clerk's office, on Monday, the first day of November, 1852,

Came the defendant, by W. T. Haggin, Esq., and filed Interrogatories herein,

Which Interrogatories are as follow:

Circuit Court of the United States for the District of Kentucky.

Gilbert C. Russell,
agst.
Danl. R. Southard, et al., Defendants.
} In Equity.

Interrogatories for witnesses to be examined on behalf of Samuel D. Tompkins.

1st. What improvements (including buildings, fences, fruit trees, shrubbery, grading, and other things) did Sam'l D. Tompkins have made upon the grounds bought by him from Dan'l R. Southard, part of the land in controversy in the above named suit?

2d. What is the value or cost of said improvements?

3d. To what amount do they enhance the value of said land?

4th. Which of said improvements were made prior to October, 1847, and which were made since that time?

5th. What is the value or cost of the improvements made prior to October, 1847, and what the value or costs of those subsequently made?

6th. State whether the improvements, including repairs made subsequent to Oct'r, 1847, were necessary and proper for the protection and preservation of the property then existing, and whether they were and are of substantial value to the land?

7th. State anything you know further advantageous to Tompkins.

NICHOLAS, HAGGIN & HARRIS,
For Tompkins.

Order Filing Interrogatories.

And afterwards, at Rules, held in the Clerk's Office, on the 10th day of January, 1853,

Came the complainant, by his counsel, and filed cross-interrogatories to the interrogatories filed by Tompkins, a defendant herein.

Cross-interrogatories.

Which cross-interrogatories are as follows:

Cross-interrogatories, on the part of Gilbert C. Russell, to the interrogatories propounded by Sam'l D. Tompkins, to be read as evidence in the United States Circuit Court for the District of Kentucky.

Cross-int'y No. 1.

Who built the houses for Mr. Samuel D. Tompkins? Did or did not one Hiram McGehee, a master builder, erect the whole of said houses, including dwelling and out-houses, under a special contract for some $5000 or thereabouts? What other improvements besides the houses have been erected there, and when erected?

Cross-int'y No. 2.—Have you examined said improvements? Can you state of what they consist? If yea, please do so. What is the present net value of said improvements as they stand, and what means have you of estimating their value?

Cross-int'y No. 3.—Was you acquainted with said land in 1847? What would you consider it then worth, without the improvements? What do you consider it worth now, without the improvements? How much do you consider it worth with them as they now stand, and what means and basis have you of forming an opinion?

Cross-int'y No. 4.—Name in detail the improvements put there prior to 1847, and those put there since? In what do they consist?

Cross-int'y No. 5.—What is the present value of the improvements put on the place prior to October, in 1847? And what the present value of those put there since?

Cross-int'y No. 6.—What repairs have been made since October, 1849, and why were they necessary? If the improvements on the property, so recently erected and put up, required repairing so early in order to preserve them, must they not have been very inferior in the first place? State which of the improvements and repairs were necessary to preserve the property, and in what respect were they necessary. Do you consider costly gardening, costly fencing, and costly shrubbery, as actually necessary to either the preservation or — of the property?

Cross-int'y No. 7.—Can you state specifically what was the cash cost of all the improvements? Did you see said improvements when being put there, or has your attention been called to them since? by whom, and for what purpose?

Cross-inty No. 8.—When did you first hear of the pendency of this suit, or of Col. Russell's claim to the property? Before all, or what part of the improvements were erected?

MONROE, MOREHEAD, & STEWART,
For Russell.

Order Filing General Interrogatory.

And afterwards, at Rules, held in the Clerk's Office, on the 31st day of January, 1853,

Came the defendants, by their counsel, and filed a general interrogatory to their interrogatories filed herein, on the 1st day of November, 1852, which is as follows:

General Interrogatory.

Circuit Court of the United States in and for the District of Kentucky.

GILBERT C. RUSSELL,
Complainant,
against
DANIEL R. SOUTHARD and others,
Defendants.
} In Equity.

A general interrogatory, to be appended to the interrogatories filed in the above cause, on behalf of the defendant, Samuel D. Tompkins, on the 1st day of November, 1852.

Int'y.—Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

NICHOLAS, HAGGIN & HARRIS,
For Sam'l D. Tompkins.

Order.

And afterwards, on Monday, the 7th day of February, 1853, at Rules, before the Judge, came the complainant, by C. S. Morehead and James Harlan, Esq., his counsel, and the defendants, by W. T. Haggin, Esq., their counsel. And on motion of the complainant, the Receiver is authorized to lease the lands mentioned in the order of his appointment and directions heretofore given, of which he has, or shall have obtained the possession, so that the terms shall not extend beyond the present year. And

It is ordered that the tenant, William Dillon, show cause here, on the first Monday in March next, why he has failed to surrender the tenement in his possession to the Receiver, and that he answer the allegation of Waste of the premises made by the Receiver in his report.

The following is the report of the Receiver:

Receiver's Report.

STATE OF KENTUCKY,
County of Jefferson.

Joshua F. Speed, upon oath, states that he has been duly appointed,

3557.

and is now acting as Receiver, under authority of the Circuit Court of the United States for the District of Kentucky, in the case lately decided on Appeal in the Supreme Court of the United States, and now depending in the aforesaid Circuit, wherein Gilbert C. Russell *vs.* Daniel R. Southard and others, in Decree, and Daniel R. South-and others *vs.* Gilbert C. Russell, on Review, are parties, complainants and defendants, in which suit the farm near the city of Louisville, containing two hundred and sixteen acres, is in contest. He states that, as such Receiver, in obedience to the order of said Court, he has secured part of the past year's rent due and collectable, and has rented out said farm for the present year to one Peter Smith, whom he has, and is ready to put into possession of all that portion of said farm included in said order, except the part of it occupied during the past year by one William Dillon, who has notified affiant that he will not give possession, whereby affiant is unable to proceed with his renting to said Smith, according to the contract entered into. Affiant has served said Dillon with reasonable notice, and said Dillon still refusing to give possession, affiant applies and awaits for such order and authority from the honorable Circuit Court as will enable him to oust him.

Affiant further states, that he by no means considers said Dillon a suitable or proper tenant to be on said farm, that he believes he has permitted and committed waste, and has every reason to believe he would continue to do so. The place is now badly dilapidated and scarcely in a tillable condition, and he thinks could not be bettered by his staying on it.

J. F. SPEED,
Receiver.

STATE OF KENTUCKY,
8th Circuit, Kentucky District, U. S.

This day Joshua F. Speed came before me, Commissioner in and for said Circuit and District, and in my presence carefully read over the within affidavit, altered and interlined the same, and subscribed it, and swore to it before me; that the facts stated therein are true as he verily believes. Witness my hand, this 3d day of Feb'y, 1853.

WM. S. PILCHER,
Com'r.

And afterwards, to wit, on the 16th day of February, A.D. 1853, at Rules, in the Clerk's office, before the Clerk,

Came the complainant, by his counsel, and filed interrogatories herein.

United States Circuit Court, Kentucky District.

GILBERT C. RUSSELL, *vs.* SAMUEL D. TOMPKINS.	}	In Equity.

Interrogatories to take the deposition of witnesses, to be read as evidence on the part of Russell, at the trial of the above cause.

Int'y No. 1.—Are you or are you not acquainted with the thirty acres of land, adjoining the limits of the City of Louisville, on which Samuel D. Tompkins erected a building in the last few years, and lately resided, and now in controversy in the above suit?

Int'y No. 2.—What do you think the said thirty acres of land is now worth, independent of any improvements on it? What was said thirty acres worth without improvements in the year 1847?

Int'y No. 3.—Can you or can you not state any fact or circumstance that enables you to know, that Samuel D. Tompkins was informed of the nature of the title by which Daniel R. Southard obtained said land? together with the amount of consideration paid by him to the person from whom he got it, and the nature and terms thereof? If yea, please state the same in detail?

Int'y No. 4.—Do you know, or can you state, any other matter or thing that can be of use or benefit to the parties to this suit, complainant or defendant, or either of them? If yea, please declare the same fully and at large in your answer, as though you were particularly interrogated thereto.

MONROE, MOREHEAD & STEWART.

We are notified of the intended filing of these interrogatories, and waive crossing the same.

Feb'y 15th, 1853. HAGGIN & HARRIS,
Atty's for Tompkins.

And afterwards, to wit, on Monday, the 2d day of May, A.D. 1853, at rules, in the Clerk's office, before the Clerk, the following order was made herein.

Set for Hearing.

On motion of the complainant, the cause is set for hearing at the next Term of this Court, to be holden in the present month.

And afterwards, at a Court held for the Circuit and District aforesaid, at the May Term thereof, in the year 1853, and on the 16th day of May,

Order.

Came the complainant, by Ben. Monroe and James Harlan, Esq., his counsel, and the defendant Samuel D. Tompkins, by W. T. Haggin, Esq., his counsel, and the parties by their counsel produced in Court the following agreement, which on their joint motion is filed, and on their like motion is entered of record.

The agreement is as follows:

Agreement Russell and Tompkins.

GILBERT C. RUSSELL,
vs.
DANIEL R. SOUTHARD.

In the above styled suit, now pending in the Circuit Court of the United States for the District of Kentucky, at Frankfort, Ky., Gilbert C. Russell and Samuel D. Tompkins have compromised their interest, and have agreed to a consent decree being rendered therein, upon the following statement of facts; which shows the present attitude of the parties and the exact terms of the compromise agreed upon, viz.: Russell filed his bill in the Circuit Court of the United States, for the District of Kentucky, to redeem a tract of two hundred and sixteen acres of land, on the Bardstown Road, near Louisville, Ky., which he alleged he had mortgaged to James Southard, deceased. James Southard having died, and by his will made Daniel R. Southard his sole devisee, he (Daniel R. Southard), defended the suit, and resisted the claim of Russell, on the ground that the transaction between James Southard and Russell was not a mortgage, but a conditional sale, and that Russell had failed to repurchase within the time stipulated and agreed upon.

The Circuit Court of the United States, for the District of Kentucky, dismissed Russell's bill. Russell carried the cause to the Supreme Court of the United States, and there the cause was reversed, the Court considering that the original transaction between Russell and James Southard was a mortgage, and Russell had a right to redeem; and sent the case back for further proceedings to be had in conformity with that opinion.

Prior to the filing of Russell's original bill, Samuel D. Tompkins had purchased from Daniel R. Southard, about thirty acres of the land in contest between Southard and Russell, and had placed thereon lasting and valuable improvements. Tompkins, by amended bill of Russell's, was made a defendant to the original suit of Russell against

Southard, and filed his answer resisting Russell's claim, as against him, upon the ground that he was an innocent purchaser without notice, and for a valuable consideration; but prayed, in the event Russell's claim was superior to Southard's and his (Tompkins), that he be allowed for the purchase-money he had paid Southard, and compensation for the improvements he had put upon the land. The Supreme Court of the United States rendered no opinion as to the merits of Tompkins' defence.

Since the cause has been remanded to the Circuit Court, Southard has filed a Bill of Review touching the merits of the original controversy between him and Russell; and Tompkins has also filed an amended answer, and by way of further defence, has plead and relied upon the Statute of Limitations as a bar to Russell's recovery against him. Thus matters now stand, as will more fully appear from the record in the case to which reference is now made. Tompkins having removed to a distant State, and having grown weary of litigation, has made and now makes to Russell the following proposition, which proposition Russell has accepted, and now hereby accepts, to wit:

Tompkins cedes and surrenders to Russell the lands bought by him (Tompkins), of Southard, and subrogates Russell in law and equity to all the rights and benefits of his (Tompkins), purchase of Southard, and also acquits him (Russell), of all claims for the purchase-money already paid by Tompkins to Southard, and of the value of all the improvements put upon the land by Tompkins, since his purchase of Southard. In consideration of which, he, Russell, is to pay Tompkins the sum of twelve thousand dollars, to be paid in four instalments of three thousand dollars each, payable in six, twelve, eighteen and twenty-four months, with interest, at the rate of six per centum per annum, upon the whole from the tenth day of March, eighteen hundred and fifty three, until paid.

It is understood that Tompkins is still indebted to Southard on the purchase of said land in the sum of two thousand dollars, with interest thereon at the rate of six per centum per annum, from the day of 18 until paid, and it is understood and agreed, by and between Russell and Tompkins, if, upon a final trial of the cause as between Russell and Southard, Southard's title should prove better and paramount to Russell, then Russell is to pay to Southard the purchase-money still owing from Tompkins to Southard. And to secure the payment of the aforesaid twelve thousand dollars, and the performance of the agreement and undertaking to pay Southard the unpaid purchase-money, in the event, upon a final trial, his title shall prove superior to Russell's, a lien is hereby expressly retained by Tompkins, and given by Russell, upon the land and improvements herein and hereby surrendered by Tompkins to Russell.

It is also understood that the wife of Southard has not relinquished her right of dower, in and to the land sold and conveyed by Southard and hereby ceded and surrendered by Tompkins to Russell, and Russell takes said land with full knowledge of and subject to that incumbrance. In other words, Tompkins cedes and surrenders to Russell all the rights and benefits of every description of his purchase of Southard, and all the improvements put upon the land by him, and Russell accepts the same with all the liabilities and incumbrances upon it, and agrees to pay Tompkins twelve thousand dollars, as above set forth, and they hereby consent that this agreement as between them shall be entered and made the decree of the court, and conclusive of their rights in the premises.

Wherefore, by the consent of Russell and Tompkins, it is ordered, and decreed and adjudged, that said Gilbert C. Russell pay to Samuel D. Tompkins, the sum of three thousand dollars, on or before the tenth day of September, eighteen hundred and fifty-three, with interest thereon, at the rate of six per centum per annum, from the tenth day of March, eighteen hundred and fifty-three, until paid; and that the said Russell also pay to said Tompkins, the further sum of three thousand dollars on or before the 10th day of March, 1854, with interest thereon, at the rate of six per centum per annum, from the 10 day of March, 1853, until paid; and that the said Russell also pay to said Tompkins the further sum of three thousand dollars on or before the 10 day of September, 1854, with interest thereon, at the rate of six per centum per annum, from the 10th day of March, 1853, until paid; and that the said Russell also pay to the said Tompkins the further sum of three thousand dollars on or before the 10 day of March, 1855, with interest thereon, at the rate of six per centum per annum, from the 10 day of March, 1853, until paid.

And in the event the above sums are not paid as above designated, then, by the consent of said Russell and Tompkins (now given), said land and improvements, bought as aforesaid by Tompkins of Southard, and herein and hereby relinquished and ceded by Tompkins to Russell, will be ordered to be sold, first for cash in hand to pay the amount due, and the balance upon credit corresponding with the times when the deferred payments become due.

Samuel D. Tompkins acknowledges himself indebted to Haggin and Harris in the sum of one thousand dollars, and hereby appropriates for their benefit the sum of two hundred and fifty dollars and interest, out of each of said three thousand dollar instalments, ordered and decreed as above set forth, to be paid by Russell to him.

Samuel D. Tompkins also acknowledges himself indebted to Samuel S. Nicholas in the sum of two hundred and fifty dollars, and hereby appropriates, for his benefit that sum with interest, out of the first instalment ordered and decreed as above set forth, to be paid by Russell to him (the said Tompkins).

(The above agreement is in duplicate, one signed Gilbert C. Russell, and the other signed Samuel D. Tompkins.)

The one signed Gilbert C. Russell then proceeds in these words.

I, Gilbert C. Russell, hereby agree to and consent, that the foregoing decree shall be entered in the above styled suit, and that the same shall be conclusive of my rights in the premises. In witness whereof, I have hereto set my hand and seal this 27 day of February, 1853.

GILBERT C. RUSSELL, [L. S.]

District of Columbia, County of Washington, sct.

I, John A. Smith, Clerk of the Circuit Court of the District of Columbia for the County of Washington, do hereby certify that, on this thirtieth day of March, 1853, personally appeared before me, Gilbert C. Russell, whose name is above subscribed and who is personally known to me, and acknowledges the above writing and agreement to be his act and deed.

[L. S.] In testimony whereof, I have hereto subscribed my name and affixed the public seal of said Court for the County aforesaid, this 30th day of March, 1853.

JNO. A. SMITH, *Clk.*

The other, signed Samuel D. Tompkins, then proceeds in these words:

I, Samuel D. Tompkins, hereby agree to and consent that the foregoing decree shall be entered in the above styled suit, and that the same shall be conclusive of my rights in the premises. In witness whereof I have hereto set my hand and seal this day of February, 1853.

SAMUEL D. TOMPKINS. [SEAL.]

Signed, sealed, and delivered in presence of

J. B. NONES,
H. G. HUGHES.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, sct.

[L. S.] By this public instrument, be it remembered, that on this first day of March, eighteen hundred and fifty-three, before me the subscriber, Joseph B. Nones, a Commissioner in and for the State of New York, appointed by the Governor of the State of Kentucky to take proof and acknowledgment of deeds, mortgages, letters of attorney, or any other instrument to be used or recorded in the said State of Kentucky, and to administer oaths and affirmations, take depositions, &c., &c., appeared Samuel D. Tompkins (the person described in, and who executed the annexed instrument between him as one of the parties thereto, and Gilbert C. Russell, the other party thereto), and acknowledged to me that he executed the said instrument voluntarily and freely, for the uses and purposes therein stated.

And I further certify, that I know the person who made the said acknowledgment to be the identical person described in, and who executed, the annexed instrument. In testimony, I have hereunto subscribed my name, and affixed my official seal, the year, month, and day first above written.

J. B. NONES,
Commissioner of the State of Kentucky for
the State of New York, as aforesaid.

Decree.

Wherefore, by the consent of Russell and Tompkins, it is ordered, decreed, and adjudged, that said Gilbert C. Russell pay to said Samuel D. Tompkins the sum of three thousand dollars, on or before the tenth day of September, eighteen hundred and fifty-three, with interest thereon at the rate of six per centum per annum, from the tenth day of March, 1853, until paid; and that the said Russell also pay to said Tompkins the further sum of three thousand dollars, on or before the 10th day of March, 1854, with interest thereon at the rate of six per centum per annum from the 10th day of March, 1853, until paid; and that the said Russell also pay to said Tompkins the further sum of three thousand dollars, on or before the 10th day of September, 1854, with interest thereon at the rate of six per centum per annum, from the 10th day of March, 1853, until paid; and that the said Russell also pay to said Tompkins the further sum of three thousand dollars, on or before the 10th day of March, 1855, with interest thereon at the rate of six per centum per annum, from the 10th day of March, 1853, until paid.

And in the event the above sums are not paid, as above designated, then, by the consent of Russell and Tompkins (now given), said lands and improvements, bought as aforesaid by Tompkins of Southard, and herein and hereby relinquished and ceded by Tompkins to Russell, will be ordered to be sold first for cash in hand, to pay the amount due, and the balance due upon credits corresponding with the times when the deferred payments become due. But it is ordered and adjudged by the Court, that this decree shall not in anywise prejudice or affect the rights of the defendant, Daniel R. Southard, in respect to either of the parties to this cause.

The following is the appeal bond executed in this cause:

Appeal Bond.

UNITED STATES OF AMERICA,
8th Circuit and Kentucky District.

Know all men by these presents, that we, Daniel R. Southard, Samuel D. Tompkins, William L. Tompkins, Matilda Burks, Joseph R. Tunstall, John Burks, James Burks, Samuel Burks, Charles Burks, and Mary Burks, and Frederick G. Edwards, are held and firmly bound unto Gilbert C. Russell in the penal sum of one thousand dollars, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 7th day of June, 1853.

Whereas, the above bound Daniel R. Southard, Samuel D. Tompkins, William L. Tompkins, Matilda Burks, Joseph R. Tunstall, John Burks, James Burks, Samuel Burks, Charles Burks, and Mary Burks, the four last named infants, by their next friend, William L. Thompson, have prayed for, and obtained an appeal from a decree of the 8th Circuit Court of the United States, in and for the Kentucky District, pronounced at the late session of this Court in the present May Term, dismissing their Bill of Review, wherein the said Daniel R. Southard, &c., were complainants, and the said Gilbert C. Russell was defendant.

Now, the condition of the above obligation is such, that if the said Daniel R. Southard, &c., shall well and truly prosecute the said appeal with effect, or, on failure thereof, pay to the said Gilbert C. Russell all costs and damages that may be awarded against them, then this obligation to be void, otherwise to remain in full force and virtue.

[SEAL.]
[SEAL.]
[SEAL.]
FREDERICK G. EDWARDS. [SEAL.]
By JNO. A. MONROE, *his Att'y in fact.*

I do hereby constitute John A. Monroe, Clerk of the U. S. Circuit Court for the Kentucky District, my attorney, with power from me, and in my name, to sign an appeal bond, as surety for the appellants in an appeal about to be taken from a decree of said Court, lately rendered against Daniel R. Southard, and others, in favor of Gilbert C. Russell, dismissing a Bill of Review filed by them in said Court.

FRED. G. EDWARDS. [SEAL.]

June 6th, 1853.
Witness
J. W. HEMMING,
S. S. NICHOLAS.

Certificate.

UNITED STATES OF AMERICA,
Eighth Circuit, Kentucky District, sct.

I, John A. Monroe, Clerk of the Eighth Circuit Court of the United States of America, in and for the Kentucky District, do hereby certify, that the foregoing three hundred and thirty-one pages (this included) contain a full, true, and complete transcript of the record and proceedings had in the suit of Daniel R. Southard and others, against Gilbert C. Russell, upon Bill of Review; and also of the Record and proceedings had, up to this period, in the suit of Gilbert C. Russell against Daniel R. Southard and others, upon the filing of the mandate of the Supreme Court of the United States.

[L. S.] In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court, this 12th day of July, A.D. 1853.

JOHN A. MONROE, *Clk.*